United States Court of Appeals

for the Second Circuit

APPENDIX

76-4203

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D. C. 20570.

UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Local 3, International Brotherhood of Electrical Workers, AFL-CIO

Case No.: 2-CP-539

11. 6.75	Charge filed
12.10.75	Complaint and Notice of Hearing, dated
1. 6.76	Respondent's answer to complaint, received
1.19.76	General Counsel's Notice of Motion to Amend Complaint, dated
1.19.76	Hearing opened
1.19.76	Hearing closed
3. 1.76	Administrative Law Judge's Decision issued
3.19.76	Respondent's Exceptions, received
6.21.76	Decision and Order issued by the National Labor Relations Board

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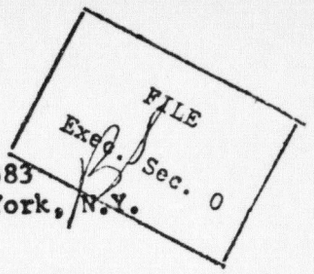
New York, N.Y.



UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL--CIO

and

GESSIN ELECTRICAL CONTRACTORS, INC.

Case 2--CP--539

DECISION AND ORDER

On March 1, 1976, Administrative Law Judge Arthur Leff issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and General Counsel filed an answering brief to Respondent's exceptions and a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1/] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

1/ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge inadvertently stated that Respondent disputed the existence of a collective-bargaining agreement between Local 3 and Gessin. The collective-bargaining agreement in dispute is between Local 363, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Gessin.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent Local 3, International Brotherhood of Electrical Workers, AFL--CIO, Flushing, New York, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. JUN 21 1976

Howard Jenkins, Jr., Member

Peter D. Walther, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

CHAIRMAN MURPHY, dissenting:

Unlike my colleagues, I would find that a question of representation could be timely raised. Therefore, I would find that the Respondent had not violated Section 8(b)(7)(A) and I would dismiss the complaint in its entirety.

Dated, Washington, D.C.

JUN 21 1976.

Betty Southard Murphy, Chairman

NATIONAL LABOR RELATIONS BOARD

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 3, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO

and

Case 2-CP-539

GESSIN ELECTRICAL CONTRACTORS, INC.

Irwin M. Portnoy, Esq., for the
General Counsel.
Norman Rothfeld, Esq. and Brian Harms, Esq.
(Menagh, Trainor and Rothfeld), for the
Respondent.

DECISION

Statement of the Case

ARTHUR LEFF, Administrative Law Judge: Upon a charge filed November 6, 1975, by the above-named Company, the General Counsel of the National Labor Relations Board, by the Regional Director of Region 2, issued a complaint, dated December 10, 1975, against the above-named labor organization, herein the Respondent, alleging that the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(7)(A) and Section 2(6) and (7) of the Act. The Respondent filed an answer disputing the Board's jurisdiction over this proceeding and also denying the commission of the alleged unfair labor practices. A hearing was held at New York City on January 19, 1976. Briefs were filed by the General Counsel and by the Respondent on February 9, 1976.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The Business of the Company

Gessin Electrical Contractors, Inc., herein referred to as Gessin or the Company, is a New York corporation, having its office and place of business in Bronx, New York, and is engaged in business as an electrical contractor in the building and construction industry. It was stipulated at the hearing that during the year 1974 Gessin in the course and conduct of its business purchased electric cable, switches, and other goods and materials, valued in excess of $50,000, that was delivered to it directly from points outside the State of New York. It was further stipulated that during each of the years 1974 and 1975 Gessin, in the

course and conduct of its business operations, performed at various construction sites located in the State of New York electrical construction contracts valued in excess of $50,000 for Graphic Building Systems, Inc., a New York corporation which has its principal office and place of business in New York City and which annually performs construction contracts outside the State of New York valued in excess of $50,000.

On the foregoing stipulated facts, I am satisfied and I find, rejecting Respondent's contention to the contrary, that Gessin is, and at times material herein was, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein. See, Siemons Mailing Service, 122 NLRB 81, 85.

II. The Labor Organizations Involved

Local 3, International Brotherhood of Electrical Workers, AFL-CIO, herein called Local 3 or Respondent, and Local 363, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 363, are labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Issue

As noted above, Respondent, Local 3, is charged in this case with violating Section 8(b)(7)(A) of the Act. The complaint alleges in substance that beginning about October 8, 1975, Local 3 picketed Gessin with an object of forcing or requiring Gessin to recognize or bargain with it as the representative of Gessin's electrical construction employees, notwithstanding that another labor organization, Local 363, was then the lawfully recognized representative of such employees under a collective-bargaining contract with Gessin which had a November 14, 1976, termination date and which operated as a contract-bar to the raising of a question concerning the representation of Gessin's aforesaid employees. Local 3 concedes that beginning in early October 1975 it intermittently picketed Gessin at a construction site where Gessin was engaged in electrical construction work, and that it did so with an object of organizing Gessin's electrical construction employees and ultimately obtaining recognition as their bargaining representative. But, as will more fully appear below, it disputes that any collective-bargaining agreement between Local 3 and Gessin was actually in existence at the time of the picketing. It asserts alternatively that even if the agreement alleged in the complaint was in existence at the time, that agreement was not the kind of agreement that would constitute a contract-bar to a question concerning representation.

B. Chronology of Events

It is undisputed that on February 26, 1973, Gessin entered into a collective-bargaining agreement with Local 363 wherein Local 363 was recognized as the exclusive bargaining representative of Gessin's

electrical construction employees. 1/ That agreement was for a term ending November 14, 1973. At the time material herein Local 363 had a collective-bargaining relationship with an association of electrical contractors, of which Gessin was not a member. Although not specific on this point, evidence in the record indicates that the provisions of the February 26, 1973, contract between Local 363 and Gessin conformed to those of a master agreement, also expiring on November 14, 1973, that Local 363 had negotiated with that employers' association. These provisions dealt comprehensively with the economic terms of employment of the covered employees, specifying precisely and in detail the agreed upon wage scales applicable to each of the various employee classifications covered thereby, the regular hours of work, the premium pay applicable under different conditions for overtime work, the paid holidays to be allowed, the paid vacations to be given, etc. The aforesaid contract also included, inter alia, a 7-day union security provision (validated for the construction industry by Section 8(f) of the Act), a provision requiring Gessin to check off and remit to Local 363 union dues of employees from whom it had received check-off authorizations, and provisions requiring Gessin to make remittances to Local 363's Pension, Welfare, and Annuity Funds, as well as to an Industry Fund, in stated amounts based on the wages earned or hours worked by each employee in the bargaining unit. The agreement also contained an automatic renewal clause providing for automatic renewal of the contract from year to year, absent notice of termination given not less than 60 or more than 90 days prior to the next termination date. The clause provided that if a notice of modification rather than of termination was given, the agreement was to be deemed renewed subject to modification of those contract provisions covered by the notice and that if the parties were unable to agree on the modifications requested within a stated time then the disputed matters were to be determined by arbitration.

There is no evidence in the record that either Local 363 or Gessin ever gave any notice of termination or modification of the aforesaid contract prior to its expiration date. But neither is there any evidence to the contrary.

On September 11, 1973, Local 3 filed a petition with the New York State Labor Relations Board seeking certification as the representative of Gessin's electrical construction employees. Local 363 did not intervene in the proceeding before the State Board initiated by Local 3's petition. On November 21, 1973, the State Board conducted an election to determine whether Gessin's electrical construction employees desired to be represented by Local 3. Local 363's name did not appear on the ballot. Gessin's electrical construction employees voted at the election not to be represented by Local 3.

At the hearing, the General Counsel placed in evidence an agreement between Gessin and Local 363 that extends the term of their earlier agreement for a period of 3 years until November 14, 1976. The

1/ The agreement recites that at the time of its execution Local 363 represented "more than a majority" of the employees covered by it.

extension agreement bears a February 1, 1974, execution date and is signed on behalf of the Company by Harvey Gessin, its secretary-treasurer, and on behalf of Local 363 by Gordon Cannizio, its president. The agreement was authenticated for admission into evidence by Harvey Gessin who testified that it was executed on the date it bears. 2/ That agreement, after reciting that the parties earlier agreement of February 26, 1973, which is therein referred to as the "main agreement," was "about to expire" and that the parties were desirous of extending the main agreement, provides as follows:

> 1. The main agreement shall continue for an additional three year period upon the same terms and conditions except as modified herein.
>
> 2. The wage provisions of the aforementioned main agreement shall be modified to provide an increase of cents per hour for each employee covered by said agreement upon the following terms and conditions.
>
> (a) The wage clause shall upon thirty days written notice by the Union be reopened on each anniversary date thereof.
>
> (b) Should the Union sign a master agreement covering the electrical industry then the terms and conditions of the master agreement as they pertain to the wages of employees shall be substituted for this paragraph.

The extension agreement, as appears from its contents, provides for a wage increase of "cents per hour" but does not specify the amount. Harvey Gessin explained in his testimony that he was informed by Local 363's president at the time the extension agreement was executed that Local 363 was then engaged in negotiating new wage terms with the contractors' association with which Local 363 had a collective-bargaining relationship; that pending the completion of such negotiations the wage rates provided for in the February 26, 1973, agreement were to remain applicable, but that those wage rates were to be superseded by the new wage rates agreed upon with the contractors' association when they became effective, and that it was with that understanding that the extension agreement was executed. Gessin's testimony that it was the intent of the extension agreement to have Gessin's wage rates conform at all times to "industry" rates established by agreements in effect between Local 363 and the contractors' association finds support in paragraph 2(b) of the extension agreement.

Respondent questions the veracity of Harvey Gessin's testimony that the extension agreement referred to above was executed on February 1, 1974, the date it bears, and contends that the record warrants an inference

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2/ Gessin testified that the extension agreement was prepared by filling in blank spaces on a standard form of extension agreement used by Local 363, and then having a copy of that form typed out and signed by the parties.

that that agreement did not actually come into existence until after Local 3 began picketing Gessin. The basis on which Respondent would have Gessin discredited and its requested inference drawn is reserved for consideration in the next subsection of this Decision. It seems appropriate to observe at this point, however, that other documentary evidence in the record, the authenticity of which was conceded by Respondent at the hearing, leaves no doubt that throughout the period material herein Gessin maintained an ongoing relationship with Local 363 reflecting its continued adherence to contractual requirements of the 1973 "main agreement." Thus, the General Counsel introduced into evidence documentary evidence showing that during 1974 (beginning in February) and through all of 1975 Gessin, in conformity with requirements of the main agreement, submitted to Local 363 each month remittance reports in which it identified the bargaining unit employees who had worked for it during the preceding month, stated the number of hours and days worked and the wages earned by each of them, and reported the amounts that were being remitted by Gessin as its contributions to Local 363's Welfare Fund, Pension Fund, Annuity Fund, and Joint Industry Fund. The General Counsel also introduced into evidence checks of Gessin drawn to the several Funds showing that these required contributions were actually paid. In addition, it was stipulated by Respondent at the hearing that Gessin's payroll records show that during 1974 and 1975, Gessin deducted from the wages of certain of its employees and remitted to Local 363 their monthly dues to Local 363. 3/

In June or July 1975, Walter Ineson, a Local 3 business agent, contacted Harvey Gessin, and requested a meeting with him. Harvey Gessin, accompanied by his father, Melvin, the Company's president, met with Ineson shortly thereafter. Ineson at that meeting made clear to the Gessins that he wanted their Company to "sign up" with Local 3 and spoke to them at some length about how a contractual relationship with Local 3 would be advantageous to the Company in the trade. When the Gessins pointed out to Ineson that their Company then had a bargaining relationship with Local 363, Ineson stated in substance that this did not present an insurmountable obstacle. Ineson told the Gessins that arrangements could be made to have Gessin's employees execute and send to Local 63 their resignations from that union; that Ineson could then sign up Gessin's employees for Local 3; and when that was done Gessin would be free to enter into a contractual relationship with Local 3. Ineson told the Gessins that if they gave him their permission to do so, he would meet with Gessin's employees and "organize the whole thing." The Gessins were noncommittal at that meeting. Several weeks later, Ineson again contacted Harvey Gessin to inquire about what he intended to do. Harvey Gessin told

3/ It appears, however, that dues were not checked off for all employees who worked for Gessin during 1974 and 1975. In the case of two employees, Gessin paid their dues to Local 363 without deducting the amount of such dues from the employees' wages. In the case of several other employees as to whom Gessin's records show no dues deductions, Gessin testified that these were either "short term" employees or employees who paid their dues directly to Local 363 instead of having them checked off from their wages.

Ineson that he could not do anything because Gessin was then tied to a contract with Local 363. Ineson repeated at that time that Gessin could be freed of its obligations to Local 363 by recourse to the procedure he had suggested at their earlier meeting.

About the first week of October 1975, Local 3 placed pickets at an apartment house construction site of Graphic Systems Inc., where Gessin was engaged as a subcontractor for Graphic in performing electrical construction work. The pickets carried placards bearing the following legend:

> Employees of Gessin Electric
>
> Join Local Union No. 3 for better wages, conditions and benefits
>
> Local Union No. 3, IBEW, AFL-CIO
> 158-11 Jewel Avenue, Flushing, New York 11365
> 591-4000

Thereafter, Local 3 continued picketing the same work site with the same picketing placard, not every day, but intermittently until some time in November 1975. On November 21, 1975, at a hearing before the United States District Court on a Section 10(1) injunction petition, Local 3 agreed to discontinue its picketing pending the Board's decision on the complaint in the instant proceeding. The picketing has not since been resumed.

C. Consideration of Respondent's Defenses, Analysis, and Concluding Findings

From the evidence in this case that is not disputed, there can be no doubt that Local 3's picketing of Gessin constituted recognitional picketing, or at the very least organizational picketing, of the kind that Section 8(b)(7)(A) interdicts where the employer being picketed has lawfully recognized another labor organization and a question concerning representation may not appropriately be raised under Section 9(c) of the Act. 4/ So much Local 3 does not dispute. Nor does it make any claim that Local 363 is not a lawfully recognized representative of Gessin's electrical construction employees. 5/ Local 3 defends its picketing conduct basically upon the ground that there was no collective-bargaining agreement in effect between Gessin and Local 363 at the time of the picketing that would have operated as a bar to a representation election under Section 9(c) of the Act. More specifically, Local 3 asserts that Gessin's collective-bargaining contract with Local 363, dated February 26, 1973, lost its viability on its November 14, 1973, expiration date, and was never thereafter revived. With respect to the 3-year extension agreement dated February 1, 1974, upon which the General Counsel relies, Local 3, contends, as noted above,

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4/ See, N.L.R.B. v. Local 239 Teamsters, 289 F.2d 41 (C.A. 2) cert den. 368 U.S. 833.

5/ See, N.L.R.B. v. Local 3, IBEW (Darby Electric Corp.), 362 F.2d 232 (C.A. 2).

that Harvey Gessin's testimony concerning the execution date of that document should be discredited and that it should be found that the document is a pre-dated one that did not actually come into existence until after the picketing began.

Local 3 adduced no evidence at the hearing that directly contradicts Harvey Gessin's testimony relating to the execution date of the extension agreement. Local 3 would support its contention principally on the basis of testimony given at the hearing by Norman Rothfeld, its attorney, in substance as follows: On October 8, 1975, 6/ Rothfeld had a meeting at his office with Howard Wendy, an attorney then representing Gessin. The meeting was at Wendy's request. Wendy told Rothfeld that Gessin was "seriously considering" entering into a contract with Local 3, but was concerned that this might present Gessin with a legal problem because, so Wendy stated, Gessin had an existing contract with Local 363. However, when Rothfeld inquired as to the expiration date of that agreement, as to the number of employees Gessin was checking off dues for, and as to the number of employees for whom Gessin was making contributions to the Teamsters Funds, Wendy was unable to supply answers to any of these questions. On October 16, 1975, Rothfeld again met with Wendy, at the latter's "urgent request." At that time, Wendy showed Rothfeld Gessin's 1973 contract with Local 363 which had a November 14, 1973, expiration date, and expressed his opinion that the automatic renewal provisions of that contract made it still effective, thereby precluding Gessin from entering into another contract, an opinion with which Rothfeld expressed his disagreement. 7/ No mention was made by Wendy of the extension agreement, dated February 1, 1974. The first indication given Rothfeld that Gessin was claiming the existence of such an agreement was on November 4, 1975, when Local 3 was served with papers in a State Court proceeding instituted by Gessin against Local 3 to enjoin the picketing. Among the papers was an affidavit which made reference to a 1974 agreement between Gessin and Local 3. Upon receipt of these papers, Rothfeld called Seymour Detsky, who had succeeded Wendy as Gessin's attorney. Rothfeld told Detsky that the reference in the affidavit to a 1974 agreement must have been an error, as he had never theretofore been informed of any contract other than the one with a November 14, 1973, expiration date. Detsky

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6/ Other evidence in the record establishes this to be about the time that Local 3's picketing of Gessin began.

7/ Rothfeld testified that he told Wendy that in his opinion Gessin's employees were free at that time to resign from Local 363, and that if they did so and if a majority of them then signed up with Local 3, Gessin could lawfully enter into a contract with Local 3. As further appears from Rothfeld's testimony, Wendy at that meeting asked for a written indemnity agreement from Local 3 to protect Gessin against any damage claims by Local 363 should Gessin sign a contract with Local 3, but his request was refused by Rothfeld. There was also some discussion at that meeting about whether Local 3 would be willing to deviate from its standard contract if Gessin signed with that union.

admitted to Rothfeld that he had not himself seen the document to which reference was made, but promised to check into the matter and to file a corrected affidavit if the document could not be produced. On November 7, 1975, Detsky supplied Rothfeld with a copy of the extension agreement, dated February 1, 1974, that is in evidence.

Rothfeld's foregoing testimony was not disputed and is credited. However, I am not persuaded on all the record that it provides a sufficient basis for discrediting Harvey Gessin and reaching the conclusion, urged by Respondent, that "the document dated February 1, 1974, must have been executed after the picketing began." Wendy's seeming lack of knowledge of the document when he conferred with Rothfeld may leave room for suspicion, but it does not per force prove that the document was not in existence at the time. Such suspicion as it may give rise to is in my judgment overcome by other considerations to which I accord greater weight. Thus, Gessin, whose testimony stands on this record unchallenged in all other material respects, did not impress me as a person who would engage in a deception of this sort. His account of the circumstances leading to the execution of the extension agreement on February 7, 1974, appears to me to be plausible, bearing in mind that Gessin's earlier contract with Local 363 was not separately negotiated but simply conformed to the standard "industry" contract that Local 3 negotiated with a contractors' association of which Gessin was not a member. Further, Harvey Gessin's testimony concerning the date of execution of the extension agreement finds strong confirmatory support in the documentary evidence, adverted to above, which clearly establishes that Gessin implemented the February 1, 1974, extension agreement by making payments on behalf of the bargaining unit employees to Local 363's pension, welfare, and other Funds, and by checking off and transmitting to Local 363 union dues of employees. It seems to me highly improbable that Gessin would have made payments of that kind in the absence of a contractual obligation to do so. In sum, I credit Harvey Gessin's testimony, and find that the agreement, dated February 1, 1974, to extend the terms of the earlier "main agreement" to November 14, 1977, was actually executed on the date stated therein, and that that agreement continued to remain in force and effect at all times material herein.

As noted above, Local 3 alternatively contends that the extension agreement, even if found to have been executed on the date it bears, may not be viewed as a contract which would constitute a bar to a representation petition because of its failure to set out precise terms, specifically with respect to wage rates, to which the parties could look for guidance. I find no merit in that contention. Harvey Gessin's testimony that it was the intent of the agreement to have the wage rates applicable to Gessin's employees conform at all times to "industry" rates established or to be established by Local 363's master agreement with the contractors' association appears to be reasonably consistent with the wording of the document. The Board has held that where a collective-bargaining contract is otherwise sufficiently complete in its terms to stabilize labor relations between the parties thereto; it will not be invalidated as a contract bar even though it leaves the wage provisions for future determination. Spartan Aircraft Co., 98 NLRB 73.

The extension agreement here fixes a definite and readily ascertainable method for determining the wage rates applicable to Gessin's employees during its term. With respect to all other terms and conditions of employment, it incorporates and continues for the duration of its term the detailed and specific provisions of the "main agreement" which it extends. I believe it clear, and I find, that the extension agreement satisfies the stability-in-labor relations standards for determining whether a contract may appropriately be deemed a contract-bar.

Accordingly, I conclude and find that the 3-year extension agreement between Gessin and Local 3, executed on February 1, 1974, operated as a contract-bar to the raising of a question concerning the representation of Gessin's electrical employees when Local 3 engaged in its picketing of Gessin. 8/ I further conclude and find that Local 3 by picketing Gessin under these circumstances with an organizational and recognitional objective violated Section 8(b)(7)(A) of the Act.

Conclusion of Law

By picketing Gessin Electrical Contractors, Inc., with an object of forcing or requiring that Company to recognize and bargain with it as the representative of the Company's electrical construction employees, and of forcing or requiring the employees of that Company to accept it as their collective-bargaining representative, at a time when said Company has lawfully recognized Local 363 and a question concerning representation might not have been appropriately raised under Section 9(c) of the Act, Respondent, Local 3, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(7)(A) and Section 2(6) and (7) of the Act.

8/ Local 3 has made no point of this in its argument, but I have taken into account in reaching my conclusion that Gessin is an employer primarily engaged in the building and construction industry to which the provisions of Section 8(f) of the Act are applicable. Although the last clause of that section provides that in certain circumstances therein specified agreements in that industry are not to be regarded as a bar to a petition filed pursuant to Section 9(c) of the Act, on the record before me, I find that clause to be inapplicable in this case. There is nothing in this record to suggest, nor has Local 3 made any claim, that the contract herein found to be a bar was executed as a pre-hire agreement pursuant to Section 8(f). See, Kiewit Puerto Rico, Inc., 208 NLRB 212. Further, without passing on whether the question would have been litigable in this proceeding if presented, I also note that Local 3 has made no contention at the hearing that Local 363's majority status had not been established when the agreement herein found to be a bar was executed. See, N.L.R.B. v. Local 3, IBEW, supra. Cf. International Hood Carriers Union (Roman Stone Construction Co., 153 NLRB 659.

The Remedy

Having found that Respondent, Local 3, has engaged in certain unfair labor practices, I shall recommend that the Respondent be ordered to cease and desist from them, and that it take the affirmative action provided for in the recommended Order, below, which I find necessary to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusion of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: 9/

ORDER

Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from picketing or threatening to picket Gessin Electrical Contractors, Inc., with an object of forcing or requiring said employer to recognize or bargain with Respondent as the representative of its employees, or forcing or requiring the employees of said employer to accept or select Respondent as their collective-bargaining representative, in circumstances where the said employer has lawfully recognized another labor organization and a question concerning representation may not appropriately be raised.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post in conspicuous places at business offices and meeting halls, including all places where notices to members are customarily posted, copies of the attached notice marked "Appendix." 10/ Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that the notices are not altered, defaced, or covered by any other material.

9/ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

10/ In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(b) Deliver or mail to the said Regional Director a signed copy of said notice for posting by Gessin Electrical Contractors, Inc., if willing.

5 (c) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, DC

March 1, 1976

Arthur Leff
Administrative Law Judge

FORM NLRB-4726
(4-71)

APPENDIX JD-130-76

NOTICE TO MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT picket or threaten to picket Gessin Electrical Contractors, Inc., with an object of forcing or requiring said employer to recognize or bargain with us as the representative of its employees, or forcing or requiring the employees of said employer to accept us as their representative, in circumstances where the said employer has lawfully recognized another labor organization and a question concerning representation may not appropriately be raised.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor - Federal Building, 26 Federal Plaza, New York, NY 10007, Telephone (212) 264-0360.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

LOCAL 3, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO

and

CASE NO. 2-CP-539

GESSIN ELECTRICAL
CONTRACTORS, INC.

COMPLAINT AND NOTICE OF HEARING

It having been charged by Gessin Electrical Contractors, Inc., herein called Gessin, that Local 3, International Brotherhood of Electrical Workers, AFL-CIO, herein called Respondent, has engaged in, and is engaging, in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec., 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director, Region 2 pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice Of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by Gessin on November 6, 1975, and served by registered mail upon Respondent on or about November 7, 1975.

2.(a) Gessin is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Gessin has maintained an office and place of business at 625 East 137th Street, in the Borough of Bronx, City and State of New York, where it is, and has been at all times material herein, continuously engaged in business as an electrical contractor in the building and construction industry.

(c) During the past year, which period is representative of its annual operations generally, Gessin, in the course and conduct of its business, purchased and caused to be transported and delivered to its place of business, electric cable, switches and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its place of business in interstate commerce directly from states

of the United States other than the state in which it is located.

3. Gessin is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2),(6) and (7) of the Act.

4. Local 363, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 363, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5. Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6. On or about February 26, 1973, Gessin and Local 363 entered into a collective bargaining agreement covering Gessin's electrical construction employees. Said agreement expired November 14, 1973.

7.(a) On or about September 11, 1973, Respondent filed a petition with the New York State Labor Relations Board in Case No. SE 47112 seeking certification as the representative of Gessin's electrical construction employees.

(b) On or about November 21, 1973, the New York State Labor Relations Board held an election among Gessin's electrical construction employees to determine whether or not they desired to be represented by Respondent.

(c) On November 30, 1973 the New York State Labor Relations Board dismissed Respondent's petition in Case No. SE 47112 because at the election described above in subparagraph (b) said employees voted not to be represented for collective bargaining purposes by Respondent.

8.(a) Since on or about February 1, 1974, Gessin has recognized Local 363 as the collective bargaining representative of its electrical construction employees and has bargained with Local 363 respecting their working conditions.

(b) On or about February 1, 1974, Gessin entered into a collective bargaining agreement with Local 363, covering the electrical contruction employees, which agreement terminates November 14, 1976.

9.(a) In or about July 1975, Respondent by Walter Ineson, a business representative and its agent, demanded that Gessin recognize it as the collective bargaining representative of its electrical construction employees.

(b) Respondent made the demand described above in subparagraph (a) notwithstanding that Gessin had lawfully recognized Local 363 as described above in paragraph 8.

10. Since on or about October 28, 1975 Respondent has picketed Gessin's premises and construction sites with signs which read:

" Employees of Gessin Electric

Join Local Union No. 3 for better
wages, conditions and benefits

Local Union No. 3, IBEW, AFL-CIO
158-11 Jewel Avenue, Flushing, New York 11365
591-4000 "

11. An object of Respondent's acts and conduct set forth in paragraphs 9 and 10 above is to force or require Gessin to recognize or bargain with Respondent as the representative of its electrical construction employees, notwithstanding that Gessin has lawfully recognized in accordance with the Act another labor organization as the representative of such employees and a question concerning the representation of such employees may not appropriately be raised under Section 9(c) of the Act.

12. Respondent, at the time it engaged in the conduct described above in paragraphs 9 and 10, was not and is not now currently certified as the representative of the employees described above in paragraph 8.

13. By the acts described above in paragraphs 9 and 10 and by each of said acts, Respondent engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(7)(A) and Section 2(6) and (7) of the Act.

14. The acts of Respondent described above in paragraphs 9 and 10 occurring in connection with the operations of Gessin described above in paragraphs 2 and 3, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 19th day of January 1976, at 11:00 a.m., at 26 Federal Plaza, Room 3614, in the City and State of New York, a hearing will be conducted before a duly designated Administative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear

in person, or otherwise and give testimony .

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the Regional Director, Region 2, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Form NLRB-4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases is attached.

Dated at New York, New York this 10th day of December 1975.

Sidney Dansdson

Sidney Dansdson, Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, New York 10007

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

----------x

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

- and -

CASE NO. 2-CP-539

GESSIN ELECTRICAL CONTRACTORS, INC.

----------x

Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, for its answer to the Complaint herein, admits the allegations contained in paragraphs 1, 2(a) and (b), 4, 5, 6, 7(a),(b) and (c), and 12 of the Complaint, and denies the allegations contained in paragraph 2(c), 3, 8(a) and (b), 9(a) and (b), 11, 13 and 14 of the Complaint, and admits the allegation contained in paragraph 10 with respect to picketing for a period of time.

WHEREFORE, Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO demands that the Complaint be dismissed.

MENAGH, TRAINOR & ROTHFELD

By: _____
Norman Rothfeld

Attorneys for Local Union No. 3,
International Brotherhood of
Electrical Workers, AFL-CIO
Office & P. O. Address
130 East 40th Street
New York, New York 10016
(212) 532-3850

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Grail C x1 Gessin Inc.
Thr 1/19/76

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UNITED STATES OF AMERICA
BEFORE NATIONAL LABOR RELATIONS BOARD
REGION 2

LOCAL 3, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO

and

CASE NO. 2-CP-539

GESSIN ELECTRICAL CONTRACTORS, INC.

NOTICE OF MOTION TO AMEND COMPLAINT

PLEASE TAKE NOTICE that at the hearing in the above captioned matter, the undersigned will move:

1. To amend paragraph 2(c) of the Complaint to read as follows:

During the year 1974, which period is representative of its annual operations generally, Gessin, in the course and conduct of its business purchased and caused to be transported to its place of business, electric cable, switches and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to said firms directly from outside the State of New York.

2. To add a new paragraph 2(d) to read as follows:

2(d). During the past year, which period is representative of its annual operations generally, Gessin, in the course and conduct of its business operations, performed electrical construction contracts at various construction sites located in the State of New York valued in excess of $50,000, for Graphic Building Systems, Inc., which enterprise annually performs construction contracts outside the state wherein said enterprise is located.

Dated at New York, New York
January 19, 1976

Irwin M. Portnoy
Counsel for the General Counsel
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, New York 10007

TO: Menagh, Trainor & Rothfeld, Esqs.
130 East 40th Street
New York, New York

Kasner & Detsky, Esqs.
122 East 42nd Street
New York, New York 10017

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Gen C.I. no.
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363

Collective Bargaining Agreement

between

LOCAL ~~819~~ 363

affiliated with

International Brotherhood of Teamsters

and

GESSIN ELECTRICAL CONTRACTORS INC.

From 2/21/73 to November 14th, 1973

GC Ex 4 v

Stipulation Ex 2

APPENDAGE, REPRESENTATIONS PURSUANT TO COLLECTIVE BARGAINING AGREEMENT DATED THE _____ DAY OF _____, 19____, BY AND BETWEEN LOCAL 819, INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND

_____

NAME OF CORPORATION: _____

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF OFFICERS, DIRECTORS, STOCKHOLDERS AND LICENSEE:

Name	Address	Telephone No.	Status

FULL TRADE NAME, PARTNERSHIP NAME OR INDIVIDUAL NAME: _____

INDIVIDUAL OR PARTNERSHIP:

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF INTERESTED PARTIES AND LICENSEE:

Name	Address	Telephone No.	Status

THIS AGREEMENT, made and entered into this 9TH day of FEB, 1972 by and between the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 819, 184 Fifth Avenue, New York, N.Y. 10010, hereinafter referred to as the UNION, and [illegible] located at [illegible], hereinafter referred to as the "EMPLOYER".

WITNESSETH:

WHEREAS, the EMPLOYER is in the

and

WHEREAS, the UNION represents more than a majority of employees covered by this Agreement, and

WHEREAS, the parties are desirous of entering into an Agreement relating to conditions of employment which will provide methods of harmonious cooperation between EMPLOYER and its employees and, to that end, accomplish fair and peaceful adjustment of disputes which may arise, without interruption of the EMPLOYER'S business.

NOW THEREFOR, IT IS MUTUALLY AGREED AS FOLLOWS:

ARTICLE I

RECOGNITION:

The EMPLOYER recognizes and acknowledges the UNION as the sole and exclusive collective bargaining agency for all of its employees, with respect to wages, hours of work, and conditions of employment, except for the following categories: Non-electrical workers, supervisors, Plant guards and office help. As a condition of their further employment, all such workers covered by this Agreement, shall become and remain members of the UNION, in good standing, at the end of their respective trial periods. All employees covered by this Agreement, shall thereafter remain members of this UNION as a condition of their employment.

Should any excepted employees above stated, join the UNION hereafter, the parties agree to meet and separately negotiate conditions of their employment.

BEST COPY AVAILABLE

ARTICLE II

UNION SECURITY:

Each employee covered by this Agreement, shall become a member of the UNION after the seventh day following the beginning of such employment, or the effective date of this Agreement, whichever is later. Each EMPLOYER shall apply to the UNION for all new electrical workers he requires. Should the UNION be unable to provide a worker satisfactory to the EMPLOYER within forty-eight hours after the mailing of a written request therefor, then the EMPLOYER shall be free to procure such workers from other sources. However, the EMPLOYER shall require every worker to present, not later than one day after he is employed, a working card issued to him by the UNION directing him for work to the EMPLOYER; and the EMPLOYER agrees not to continue the employment of any worker who shall not procure such card. The UNION agrees to issue such cards to all workers, without any discrimination whatsoever; and without any requirement that such worker be a member of the UNION. Any EMPLOYER who hires UNION employees, without calling upon the UNION, pursuant to the Agreement, or who hires non-Union men, who do not have or apply for working cards from the UNION within the prescribed time, shall have effected a breach of this Agreement in its very essence, and, in addition to other remedies, the EMPLOYER shall pay to the Joint Industry Fund the sum equal to the salary paid said employees and the Class A rates as set forth here for entire pay involved.

ARTICLE III

HOURS OF WORK AND WAGES:

SECTION 1. A week's work shall consist of thirty five (35) hours, divided into five (5) days of seven (7) hours each, performed between the hours of eight (8) A.M. and six (6) P.M., from Monday through Friday of each week. Time and one-half shall be paid for all work on Saturday, double time shall be paid for all work on Sunday, and double time plus holiday pay shall be paid for work on the paid holidays hereinafter listed. Time and one-half shall be paid after seven hours on each regular working day; all work after 5 P.M. on Saturday, shall be at double time pay rate. All work after 6 P.M. on week days notwithstanding the starting time shall be compensated at 1-1/2 rate of pay; until 12 Midnight, after which double time rate shall apply. On any regular working day, the 8th hour is guaranteed.

SECTION 2. Any employee who has not been notified 24 hours in advance not to report for work shall receive 4 hours work or the monetary equivalent thereof.

SECTION 3. Wages shall be paid once a week for all work done prior to the date of payment. Weekly wages shall be paid in cash unless the EMPLOYER secures a permit from the Department of Labor to pay by check. Payment of wages shall be on company time.

ARTICLE IV

HOLIDAYS:

The EMPLOYER agrees to allow all employees the following holidays with pay, regardless of the day of the week on which the holiday falls: ELECTION DAY

1. New Year's Day
2. Washington's Birthday
3. Decoration Day
4. Independence Day
5. Labor Day
6. Thanksgiving Day
7. Day after Thanksgiving Day
8. Christmas Day

All laid off employees shall receive holiday pay for the aforementioned holidays only if they have worked at any time within five (5) working days before or after the holiday. Any employee working on any of the holidays hereinabove set forth, shall receive holiday pay, in addition to wages as herein provided.

ARTICLE V

VACATIONS:

Vacations shall be given on a pro-rata basis at least once a year, or at the time of final termination of the Employer-employee relationship, whichever shall occur first, as follows:

Four per cent (4) of gross base pay per annum shall be paid to any employee working three (3) days of continuous employment to qualify for vacation pay, should termination of their employment occur.

A. The EMPLOYER agrees that he will give all employees paid vacations at any time during the calendar year which is mutually agreeable to the EMPLOYER and the employees. The EMPLOYER further agrees that the earned vacation pay shall be considered held by the EMPLOYER as Trust Funds for the benefit of the employee, until such payment is due and made to the employee.

B. The UNION is granted an option to establish a Vacation Plan. If such Vacation Plan is created, the UNION shall serve written notice upon the EMPLOYER, setting forth the procedures for remittance of vacation pay by the EMPLOYERS.

C. That in the event an EMPLOYER fails to make payment of the

vacation pay when due as hereinabove set forth, then and in such event, the EMPLOYER shall in addition, pay to the employee, two (2%) per cent per day of the amount due, until date of payment. In addition, should any proceedings be instituted for the enforcement and collection of the sums due to the employee, then in such event, the EMPLOYER shall be responsible for all costs and disbursements, incurred, and in addition, up to the sum of twenty-five (25%) per cent counsel fees, based on the total sum of monies due to the employee.

ARTICLE VI

DISCHARGE CLAUSE:

SECTION 1. The EMPLOYER shall have no right to immediate discharge except for DISHONESTY, DRUNKENNESS, or ASSAULT. Immediately upon discharge, he shall notify the UNION, in writing by registered mail, of the alleged reasons therefor. Should the UNION challenge the discharge after receipt of such notice, and in the event that the matter cannot be adjusted between the parties, it shall be settled by Arbitration as hereinafter provided. Should the employee be found innocent of the charge, he shall be reinstated immediately, with pay from the date of discharge.

SECTION 2. Should the EMPLOYER have a grievance or complaint other than for reasons set forth hereinabove, he shall notify the UNION in writing by registered mail of his complaint. If the parties cannot adjust same, it shall be referred to Arbitration as hereinafter provided. In no event, however, is the employee to be discharged or dismissed from the premises until an Arbitrator shall decide.

ARTICLE VII

DISCRIMINATION:

There shall be no discrimination of any kind against any employee of the employer for: Union Activity, Race, Color, Creed or Nationality, by the EMPLOYER or anyone in his employ, or on his behalf.

ARTICLE VIII

MODIFICATION OF AGREEMENT:

Neither the EMPLOYER, nor anyone individual worker or group of workers, have the right to modify or waive any of the provisions of this Agreement. The EMPLOYER will not enter into any individual Agreement or arrangements with any of its employees covered by this Agreement.

ARTICLE IX

SHOP STEWARD:

The UNION shall have the right to establish a Shop Steward in each shop of the EMPLOYER covered by this Agreement. Such Shop Steward shall have the right to take up with a representative of the EMPLOYER, all grievances arising out of this Agreement. The Shop Steward shall have super-seniority.

ARTICLE X

REDUCTION OF RATES:

Nothing in any provisions of this Agreement shall be so construed, anything to the contrary notwithstanding, as to effect a reduction in wage rate of any worker, or increase the number of hours per week which the worker shall be compelled to work in order to earn his present weekly wage.

ARTICLE XI

EXAMINATION OF RECORDS:

The UNION shall have a right to examine books and records of any EMPLOYER, to determine the days of employment, hours and wages paid to its employees. The UNION shall give the EMPLOYER reasonable notice, personally, by telephone, by mail, and/or by telegram, of its intention to examine the books and records, stating the date and time that the examination shall take place. Unless otherwise stated, as hereinafter set forth, said examination shall take place at the EMPLOYER'S place of business, during reasonable business hours.

(A) If such notice is served by telegram or by certified mail, the UNION shall give the EMPLOYER a minimum of seven (7) days' notice, from the date of sending said communication, as to the date, and time of examination. In the event the EMPLOYER cannot keep the appointment, and requests an adjournment of this examination, said adjournment shall be secured by use of a telegram and/or certified mail, which shall be sent no later than three (3) days prior to the date of the scheduled examination.

(B) The EMPLOYER shall be liable to a maximum sum of Fifty ($50.00) Dollars, as an for damages and/or expenses, incurred by the UNION, in sending an accountant, and/or an employee, or both, to the EMPLOYER'S place of business, and not being afforded an opportunity to hold the examination. This shall apply in such situation wherein the EMPLOYER has not adjourned the scheduled examination. It being intended that the UNION shall not make needless trips and/or incur expenses in attempting to conduct an examination of the EMPLOYER'S books and records.

(C) In the event an EMPLOYER fails to permit an examination of his books and records, or adjourns, cancels or otherwise delays an examination for a period in excess of three (3) weeks from the date of first notice of intention given by the UNION, the books and records shall thereafter be examined at the offices of the UNION.

(D) The books and records required to be produced by an EMPLOYER, shall be limited to such books and records relevant to wages and hours, as well as any forms submitted by the EMPLOYER to the Internal Revenue Service, as and for deductions made by the EMPLOYER, relating to payments as and for the Pension Fund E, Welfare Fund E, Annuity Fund E, and Joint Industry Fund E.

(E) In the event an arbitration proceeding shall be had, as hereinafter set forth, the EMPLOYER shall produce all of the relevant books and records pertaining to the arbitration proceeding.

(F) Nothing in this contract shall be interpreted so as to prohibit the right of any UNION representative to visit the shop during business hours.

(G) The failure by the EMPLOYER, to permit the examination of his books and records, shall be deemed to be a material breach of this Agreement. Said breach shall in no fashion or manner relieve the EMPLOYER from any and all responsibilities and liabilities pursuant to the terms of this Agreement. The UNION shall in no effect or manner be deprived in any of its rights and remedies hereunder.

ARTICLE XII

BULLETIN BOARDS:

The EMPLOYER agrees to allow the UNION the use of a sufficient number of Bulletin Boards in the shop to be used exclusively for the UNION notices.

ARTICLE XIII

CHECK OFF:

The EMPLOYER agrees, that he will deduct from the salary of any present or future employees covered by this Agreement once a month, out of the first salary payable in each month, the amount of Dues and Initiation fees the employee is required to pay the UNION for the month. As to new employees, the EMPLOYER will deduct from their salaries such amounts as the UNION will bill the EMPLOYER for the purpose hereinabove specified. Once a month, within one (1) week from the date of such deduction,

the EMPLOYER will deliver the money [illegible] and deducted to a duly authorized representative designated by the U[illegible] for that purpose. The UNION agrees that as a condition to such deduction, it will file and maintain with the EMPLOYER, written authorization for such deduction for each employee from whom such deduction must be made. Such deductions shall be considered Trust Funds. In the event the EMPLOYER fails to make remittance as hereinabove set forth, the EMPLOYER shall in addition pay, to the UNION, the sum of one-half (1/2) of one (1%) per cent for each and every day of the total amount due and payable, to the date of payment.

ARTICLE XIV

ARBITRATION:

SECTION 1. All controversies, complaints, disputes and grievances arising out of or in any way relating to this Agreement, whether based on facts antedating or post-dating the execution of this Agreement, shall be settled by the arbitration in accordance with the procedure set out in this Article.

SECTION 2. Either party hereto, desiring arbitration under the provisions of this Article, shall mail to the other party hereto, by certified or registered mail, a demand for arbitration by a staff member of the New York State Board of Mediation, and the said demand for arbitration shall describe the general nature of the claim and the relief requested. Within five days after receipt of a demand served in accordance with this Article, the responding party shall mail to the demanding party, by certified or registered mail, an answer stating the defenses to the claim, and describing any counter-claims which are arbitrable under this Agreement, and any other relief requested. The arbitration before a staff member of the New York State Board of Mediation shall then proceed expeditiously. The date of registered and/or certified mailing, shall be conclusive proof of service of the demand for arbitration. Upon the failure of any party to accept the registered or certified mail, either party shall then be entitled to mail the demand for arbitration by ordinary mail, and execute an affidavit to that effect. The date of mailing the demand for arbitration, by registered or certified mail, shall be deemed conclusive for all periods of computing time limitations.

SECTION 3. If the answering party shall fail or refuse to file an answer pursuant to the provisions of this Article, then the demanding party may proceed to arbitration before a staff member of the New York State Board of Mediation.

SECTION 4. Should either of the parties fail to attend the hearing set by the arbitrator, after due notice thereof, the arbitrator shall be empowered to proceed with such hearing in the absence of said party, and the decision and/or award of the arbitrator shall be final and binding upon both parties.

SECTION 5. In the event the New York State Board of Mediation will not designate a staff arbitrator, then and in such event, a panel arbitrator may be designated by the said New York State Board of Mediation.

SECTION 6. Any decision or award of the arbitrator shall be made in writing, and shall be final and binding upon both parties.

SECTION 7. In lieu of demanding arbitration before a staff member of the New York State Board of Mediation, as provided in this Article, the demanding party may, at his option, apply to any Court which has jurisdiction, for an Order appointing an arbitrator pursuant to Section 7504 CPLR.

SECTION 8. Any time period specified in this Article can be extended by a written agreement, signed by both parties, and any provision of this Article can be altered at any time by a like Agreement.

SECTION 9. The fees of the respective arbitrators, shall be awarded by the arbitrator who hears the issues.

SECTION 10. The Law of the State of New York shall govern, in all respects, the validity, construction, and enforcement of this Article, and each party to this Agreement hereby consents to and submits his person to the jurisdiction of the Supreme Court of the State of New York for the enforcement of this Article, and for the enforcement of any award resulting from an arbitration conducted pursuant to this Article.

SECTION 11. This Article constitutes an Agreement, separate and distinct from any and all of the other provisions of this contract, and shall be regarded, as in all respects, separable from the other provisions of this contract, and unaffected by any fact or circumstances which might impair the validity of any or all of the other provisions of this contract.

SECTION 12. The parties specifically agree that if the EMPLOYER violates or breaches this Agreement, or any of the terms thereof, so that the UNION demands arbitration hereunder, or otherwise commences legal proceedings in connection with such violation or breach by the EMPLOYER; then the EMPLOYER shall be liable for all reasonable legal fees and disbursements may be included in any award or decision made by the Court or arbitrator.

SECTION 13 (A). REIMBURSEMENT OF LEGAL FEES AND DISBURSEMENTS

The parties further agree that if an EMPLOYER bound by this Agreement, violates or breaches this Agreement, or any of the terms thereof, so that the UNION must commence any proceedings, of any kind or nature, including but not limited to arbitration, to enforce such breach, then and in that event, such EMPLOYER shall be liable for reasonable fees and disbursements incurred by the UNION due to such breach.

ARTICLE XV

WORK STOPPAGE:

Where an unauthorized work stoppage or strike occurs, the UNION will make immediate efforts to return its members to their respective jobs, and shall request its members to cease any action which may affect production. Each EMPLOYER in consideration of the performance by the UNION of the aforesaid undertakings, absolves the UNION, its officers or agents, from liability by suit for damages for breach of contract, of any kind or character whatsoever. It is distinctly agreed and understood that the UNION shall not be held liable for any unauthorized or outlaw strikes, or the individual acts or actions of any employees or employee. Nothing herein contained, however, shall be deemed to limit the rights of EMPLOYERS to enforce any legal claims which they may have against their employees.

ARTICLE XVI

SAFETY PROVISIONS & PAY FOR LOST TIME:

SECTION 1. Each EMPLOYER will make reasonable provisions for the safety and the health of its employees, and shall comply with all Federal, State and Municipal requirements for safeguards and cleanliness. Should a worker be injured on the job, he shall be paid for his entire day. Should he lose time thereafter the next day for treatment for injuries suffered while employed, he shall be paid for such lost time.

SECTION 2. The EMPLOYER agrees to comply with any notice from the UNION, concerning health and safety regulations which may be promulgated by the UNION.

ARTICLE XVII

TOOLS:

Each employee shall have the tools necessary to perform the duties of his classification. The EMPLOYER shall be responsible for the loss of all tools which have been stolen from under lock and key and reported to the authorities.

ARTICLE XVIII

PENSION FUND: WELFARE FUND: ANNUITY FUND:

SECTION 1. The EMPLOYER shall pay to the Local ~~878~~ 363 PENSION FUND E, the sum of three (3%) per cent of all wages and salary paid by the EMPLOYER to all the employees who are covered by this Agreement. A remittance equal to three (3%) per cent of the amount of gross wages and salary, is meant the amount due to the employees before deduction of withholding taxes, F.I.C.A., or any other deductions.

SECTION 2. On each day on which the EMPLOYER shall pay wages to any employee covered by this Agreement, the EMPLOYER shall remit to LOCAL 363 WELFARE FUND E, the sum of twenty-two (22¢) cents per hour, for each hour for which he shall have paid said employees on any pay day. The contribution of the EMPLOYER must be a minimum contribution of Eight Dollars and Forty cents ($8.40) per week.

SECTION 3. The EMPLOYER shall pay to LOCAL 363 ANNUITY FUND E the sum of One Dollar ($1.00) per day for each employee who is covered by this Agreement and who is employed for any period of time during a day, during the term of this Agreement.

SECTION 4. The employer shall pay to the Joint Industry Fund E the sum of 3/4 of 1% of all wages and salary paid by the employer to all employees who are covered by this agreement. Wages and salary as used herein shall mean the amount due to employees before deductions.

SECTION 5. Each and every remittance, and payment as aforestated, shall be made by the EMPLOYER, to the respective order of each of the Funds, and shall be accompanied by duplicate copies of remittance reports, made in accordance with forms to be furnished to the EMPLOYER by the respective Funds. All said contributions, shall be made by the EMPLOYER, by sending same to the respective Administrator of each Fund, at the Fund's duly designated address, on each day on which payment is made to any employee.

SECTION 6. Should the EMPLOYER be in default in making the required remittance and payment of Pension contribution, Welfare contribution, Annuity contribution, and Joint Industry Fund contribution, then and in such event, such failure on the part of the Employer, shall constitute a breach of this Agreement by the EMPLOYER. The UNION shall be relieved in respect to any and all obligations under this Collective Bargaining Agreement, but shall retain all rights thereunder during the period that the EMPLOYER shall remain in default. The Employer shall have no rights under this Agreement, as long as he remains in default, without, however, depriving the UNION of any of its rights and remedies hereunder.

SECTION 7. The individual licensee, all parties to this Collective Bargaining Agreement, individuals and/or partners, as well as stockholders, directors and officers of any corporate EMPLOYER, shall be personally responsible for payment of any and all accrued Pension, Welfare, Annuity and for Joint Industry Fund contributions, with the same force and effect as though they had personally guaranteed payment thereof as additional wages. Any and all funds due and owing, pursuant to the terms of the respective Funds, shall be deemed and considered to be Trust Funds.

SECTION 8. The EMPLOYER by execution of this Agreement, is bound by, and agrees to comply with the terms of all of the respective Trust Plans and Indentures, now existing or which may hereafter be amended, with the same force and effect as though he had by these presents, executed the same.

SECTION 9. Upon failure of the EMPLOYER to permit an examination of his books and records pertaining to payroll and employees, the prior remittance sheets submitted by the EMPLOYER, may be introduced by the UNION and/or the Administrator of the respective Funds, so as to establish prima facie evidence of employees and payroll, at any arbitration proceeding or at any other action that may be taken to enforce the rights of the UNION, as well as of the respective Funds, under the terms of this Agreement.

SECTION 10. The EMPLOYER shall notify the UNION within forty-eight (48) hours of any termination of employment of any employee. The EMPLOYER shall be and remain liable and responsible, for any and all benefits that might be due and owing to the respective Funds, and/or to the UNION, until such time as the EMPLOYER shall give notice to the UNION in writing, that the employee is no longer in his employ. Benefits, as applicable, shall be terminated for the employee, forty-eight (48) hours, from date of receipt of notice of termination of employment, by the UNION.

ARTICLE XIX

CLASSIFICATION:

SECTION 1. The EMPLOYER acknowledges that the UNION has established a Joint Industry Board. The EMPLOYER agrees to be bound by any determination made by said Joint Industry Board. In addition, the parties are in agreement that classification, and/or re-classification of employees, shall be the sole responsibility of the Joint Industry Board.

SECTION 2. In the event that a mechanic responsible for a particular electrical job shall perform his function in a faulty manner, said employee shall be responsible for re-doing such job in a proper manner on his own time, and without additional compensation.

SECTION 3. The EMPLOYER agrees that he will not place any man other than a man classified as an "A" electrician in charge of a job. Foremen, as defined in the Contract, are to receive an additional twenty-five (25¢) cents per hour while acting as such. Also, no job shall be started and completed without an "A" electrician on the job.

SECTION 4. Any "A" man in charge of three (3) or more men, running a job shall receive an additional twenty-five (25¢) cents per hour

above the "A" man's scale for the period of time during which he is in charge of three (3) or more men and running a job.

SECTION 5. The EMPLOYER agrees that a qualified "A" man shall be in attendance at every job, and that he will have the responsibility for the work at said job.

SECTION 6. The parties agree that there will be no transferring or farming-out of employees between other shops to the detriment of unemployed unit men on the unit list of availability.

SECTION 7. No EMPLOYER shall work if he employs more than three men.

SECTION 8. The Administrator of the Joint Industry Board shall have the right to notify the Employer to direct any apprentice, in its employ, to appear at the office of the Joint Industry Board. The Employer agrees, upon twenty-four (24) hours' notice, to notify and direct the apprentice to appear at the office of the Joint Industry Board. Such appearance shall be at the expense of the apprentice, and the Employer need not make payment to the apprentice for said period of absence from work.

In the event the apprentice does not appear through negligence of the Employer, or should the Employer continue the Apprentice in his employ without a re-employment notice from the Administrator, the Employer shall pay to the Joint Industry Fund the difference in wages as set forth herein between the Apprentice wage and the A Mechanics wage, until such notice is obtained.

ARTICLE XX

TRANSPORTATION:

SECTION 1. If an employee is assigned a job outside of the City of New York, the EMPLOYER shall compute the amount of time worked by the employee from the minute he leaves the City of New York, to the time he arrives at the place of employment.

ARTICLE XXI

SURVIVAL:

SECTION 1. This Agreement shall be binding upon the respective parties hereto, their successors and assigns, and shall survive any dissolution, mergers, re-organization, change of name, change of location, place of business, or otherwise. It is the intention of the parties, that no device, such as mergers, dissolution of partnerships, change of corporations, or corporate structure, transfer and/or sales of shares of stock, or change and/or amendment of operating entity, or otherwise, shall be used by an EMPLOYER so as to avoid the provisions of this Agreement.

SECTION 2. Should the principals of any EMPLOYER engage in the business of operating additional or other electrical contracting businesses, directly or indirectly, under any other corporate, partnership or individual entity, then and in that event, such principals shall be personally responsible for the compliance by such other entity with all of the terms of this Agreement, with the same force and effect as though such other entity were a party hereto.

SECTION 3. Nothing herein contained, however, shall prohibit any principal from a bona fide entry into another firm which is subject to existing, Collective Bargaining Agreement with another UNION, providing that such Collective Bargaining Agreement shall have been in existence for over six months at the time of entry of the principal into the new firm, provided further, that such principal is not in default under any of the terms of this Agreement.

ARTICLE XXII

NOTIFICATION OF TERMINATION OF EMPLOYMENT:

The EMPLOYER undertakes to notify the UNION, in writing, within forty-eight (48) hours, of any layoff, discharge, or voluntary termination of employment by an employee covered under this Agreement. The UNION shall furnish necessary forms to be used by the EMPLOYER for this purpose. Failure of an EMPLOYER to timely notify the UNION, shall render the Employer liable to the UNION and to the respective Funds, for all sums of money based on the last weekly payroll period, from dates of layoff, discharge, or voluntary termination of employment, until date of notification.

ARTICLE XXIII

SAVINGS CLAUSE:

Should any part of this Agreement or portion therein contained be rendered or declared illegal, legally invalid or unenforceable by a Court of competent jurisdiction, or by the decision of any authorized Governmental Agency, such as invalidation of such part or portion of this Agreement, shall not invalidate the remaining portions thereof. In the event of such occurrence, the parties agree to meet immediately, and if possible substitute provisions for such parts or portions rendered or declared illegal or invalid. Should the parties be unable to agree on substitute provisions, the matter shall be referred to arbitration, as hereinbefore provided. The remaining parts and provisions of this Agreement shall remain in full force and effect.

ARTICLE XXIV

PRIOR CONTRACT:

The parties to this Agreement acknowledge that notwithstanding the

fact that this Agreement may be executed at a date subsequent to the expiration of any previous Contract between the parties, all of the provisions of this Contract are retroactive to the date first following the expiration date of the previous Contract. This clause operates only where the EMPLOYER had a previous Contract with the UNION. Any and all benefits accruing under the terms of any prior Agreement, shall remain in full force and effect, including but not limited to any prorated vacation pay.

ARTICLE XXV

SUBSTITUTION OF ASSOCIATION CONTRACT:

Should the EMPLOYER herein named hereafter become a member of an association of the EMPLOYER'S and should such association negotiate with LOCAL 819, Aff. I.B. of T. a Collective Bargaining Agreement applicable to members of Association, and should the EMPLOYER herein named, by reason of the foregoing become a party to and be bound by the terms and conditions of such associationwide Collective Bargaining Agreement, then and in that event the within Agreement shall be deemed replaced, by such Associationwide Agreement, and shall be of no further force and effect. Provided further, that any and all liabilities of the EMPLOYER, as well as any benefits that might be due and owing under the previous Contract, shall be deemed in full force and effect, and shall survive for the purpose of enforcement by the UNION and/or the respective Funds.

ARTICLE XXVI

The interpretation and enforcement of this Agreement shall be governed by the laws of the State of New York. There shall be no modification of this Agreement, except by a duly executed modification in writing.

ARTICLE XXVII

WAGE SCALE: EFFECTIVE AS OF DATE ENUMERATED.

November 15th, 1970 to November 15th, 1971

A Man	$4.50 per hour
M Man	$3.93 per hour
Fifth Year Apprentice	$3.52 per hour
Fourth Year Apprentice	$3.34 per hour
Third Year Apprentice	$3.02 per hour
Second Year Apprentice	$2.75 per hour
First Year Apprentice second six months	$2.35 per hour
First Year Apprentice 1st six months	$2.25 per hour

NOVEMBER 15th, 1971 to NOVEMBER 15th, 1972

A Man	-	$4.86 per hour
M Man	-	$4.24 per hour
Fifth Year Apprentice	-	$3.80 per hour
Fourth Year Apprentice	-	$3.61 per hour
Third Year Apprentice	-	$3.26 per hour
Second Year Apprentice	-	$2.97 per hour
First Year Apprentice second six months	-	$2.78 per hour
Firt Year Apprentice 1st six months	-	$2.43 per hour

NOVEMBER 15th, 1972 to NOVEMBER 15th, 1973

A Man	-	$5.25 per hour
M Man	-	$4.50 per hour
Fifth Year Apprentice	-	$4.11 per hour
Fourth Year Apprentice	-	$3.90 per hour
Third Year Apprentice	-	$3.52 per hour
Second Year Apprentice	-	$3.21 per hour
First Year Apprentice second six months	-	$3.00 per hour
First Year Apprentice	-	$2.62 per hour

IT IS EXPRESSLY AGREED AND UNDERSTOOD that the Employer shall pay a wage scale as prescribed in any contract executed by the Employer with any governmental or municipal authority or sub-divisions thereof.

ARTICLE XXVIII

EXPIRATION:

This Agreement shall expire on the 14 day of Nov, 1973, and shall be automatically renewed from year to year, thereafter, unless written notice of termination shall be given by either party by registered mail sent not less than sixty (60) days nor more than ninety (90) days prior to the next termination date. Either party may also, not more than ninety (90) days prior to the next termination date, give written notice by registered mail, of a desire to modify the provisions respecting hours of work, vacations, wages, and other benefits, such notice of modification shall not act to terminate the Agreement, and barring notice of termination, the Agreement shall be deemed renewed subject to modification of the provisions sought to be modified. Should the parties be unable to agree upon the modification by thirty (30) days prior to the next termination date, then such disputes shall be determined by arbitration, pursuant to the arbitration clause herein contained.

SUCCESSOR CLAUSE:

In the event of the Union's affiliation or merger with another Union Local, or another International or in event the Union changes its name or is transferred to the jurisdiction of another region, the successor Union, assignee Union or the newly merged Union, shall assume in all respect the obligations under this Agreement and that the Union, as party to this Agreement shall make known in advance to the successor assignee Union all the terms and conditions hereof, and the employer agrees to recogni: such successor.

ARTICLE XXIX

REPRESENTATIONS:

The EMPLOYER herein represents that the appendage to this Con tract, entitled "EMPLOYER'S STATUS", truly and accurately sets forth all of the information stated thereon.

IN WITNESS THEREOF, the parties hereto have caused these presents to be executed by duly authorized representatives as and for individuals, partnerships, and/or officers of corporations, and have hereunto set their respective hands and seals, the day and year first above written.

EMPLOYER

BY: _____

BY: _____

AMENDMENT AGREEMENT MADE THIS 1st DAY OF February, 1974

BY AND BETWEEN LOCAL 363, I.B. of T., HEREINAFTER CALLED UNION, AND

Gessin Electrical Contractor

WHOSE PRINCIPLE PLACE OF BUSINESS IS 345 East 94th Street., New York, NY

HEREINAFTER CALLED COMPANY.

WHEREAS, THE UNION AND THE COMPANY HAVE HERETOFORE ENTERED INTO A COLLECTIVE BARGAINING AGREEMENT DATED February 26, 1973

(WHICH AGREEMENT IS HEREINAFTER REFERRED TO AS MAIN AGREEMENT),

AND

WHEREAS THE MAIN AGREEMENT IS ABOUT TO EXPIRE,

AND

WHEREAS THE PARTIES DESIRE TO EXTEND SUCH MAIN AGREEMENT.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. THE MAIN AGREEMENT SHALL CONTINUE FOR AN ADDITIONAL THREE YEAR PERIOD UPON THE SAME TERMS AND CONDITIONS EXCEPT AS MODIFIED HEREIN.

2. THE WAGE PROVISIONS OF THE AFOREMENTIONED MAIN AGREEMENT SHALL BE MODIFIED TO PROVIDE FOR AN INCREASE OF CENTS PER HOUR FOR EACH EMPLOYEE COVERED BY SAID AGREEMENT UPON THE FOLLOWING TERMS AND CONDITIONS.

a. THE WAGE CLAUSE SHALL UPON THIRTY DAYS WRITTEN NOTICE BY THE UNION BE REOPENED ON EACH ANNIVERSARY DATE HEREOF,

AND

b. SHOULD THE UNION SIGN A MASTER AGREEMENT COVERING THE ELECTRICAL INDUSTRY THEN THE TERMS AND CONDITIONS OF SAID MASTER AGREEMENT AS THE PERTAIN TO THE WAGES OF EMPLOYEES SHALL BE SUBSTITUTED FOR THIS PARAGRAPH.

GC EX 5 in E.D.

IN WITNESS WHEREOF:

THE PARTIES HERETO HAVE PLACED THEIR HANDS AND SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

Gessin Electrical Contra tors, Inc.
EMPLOYER

BY:

LOCAL 363, I. B. of T.
UNION

BY:

NOTE: This form must be submitted not later than the 10th of month, following the period covered.

JOINT INDUSTRY FUND "E" REMITTANCE REPORT

3/73

Make Check Payable to
JOINT INDUSTRY FUND "E"
184 5th Avenue, N. Y. C. 10010

COMPANY [illegible]

ADDRESS [illegible]

EMPLOYEES NAME	TOTAL WAGES	2½% OF 1%	PERIOD COVERED FROM	PERIOD COVERED TO
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL	[illegible]	[illegible]		

DATE OF REMITTANCE 3-9-73

SIGNED [illegible] TITLE [illegible]

9-2x4

BEST COPY AVAILABLE

REMITTANCE REPORT

BEGINNING 11-1-73 TO 11-15-73 COMPANY [illegible]

ADDRESS 60 E 131 ST DATE OF REMITTANCE 12-9-73 SIGNED [illegible] TITLE [illegible]

EMPLOYEES NAME	Local 363 Welfare Fund "E"			(IF REQUIRED) Local 363 Pension Fund "E"				(IF REQUIRE Local 363 Annuity Fund	
	Total hours Worked during PERIOD	AMOUNT CONTRIBUTED		Total earnings DURING PERIOD		AMOUNT CONTRIBUTED		NUMBER OF DAYS WORKED	
Thomas Edwards	80	17	60	499	50	14	94	10	10
Lawrence Hobson	80	17	60	382	50	11	47	10	10
Casper Wheeler	80	17	60	319	60	9	53	10	2
Albert Perkins	80	17	60	222	70	6	63	10	10
TOTAL		70	40	1424	60	42	77	40	40

EMPLOYER COPY

REMITTANCE REPORT

NG 2-1-[illegible] TO [illegible] OMPANY [illegible]

ADDRESS [illegible] OF REMITTANC 3-9-74 SIGNED [illegible] TITLE [illegible]

EMPLOYEES NAME	Local 363 Welfare Fund "E" Total hours Worked during PERIOD	AMOUNT CONTRIBUTED		(IF REQUIRED) Local 363 Pension Fund "E" Total earnings during PERIOD		AMOUNT CONTRIBUTED		(IF REQUIRED) Local 363 Annuity Fund NUMBER OF DAYS WORKED	AMOUNT CONTRIBUTED
[illegible]	152	41	04	799	60	24	18	19	5
[illegible]	160	43	20	1027	96	30	83	20	6
[illegible]	160	43	20	830	52	24	91	20	6
Albert [illegible]	152	41	04	677	62	20	32	19	5
Orlando Moreno	24	6	48	87	72	2	69	3	

NOTE: This form must be submitted not later than the 10th of the month, following the period covered.

JOINT INDUSTRY FUND "E" REMITTANCE REPORT

Make Check Payable to
JOINT INDUSTRY FUND "E"
184 5th Avenue, N. Y. C. 10010

COMPANY [illegible]

ADDRESS [illegible]

EMPLOYEES NAME	TOTAL WAGES	½ OF 1%	PERIOD COVERED FROM	PERIOD COVERED TO
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]		
TOTAL		[illegible]		

DATE OF REMITTANCE 3-9-74 #591

SIGNED _____ TITLE _____

45A

989-7944

LOCAL 363 WELFARE FUND "E"
LOCAL 363 PENSION FUND "E"
LOCAL 363 ANNUITY FUND "E"

150 FIFTH AVENUE • NEW YORK, N. Y. 10011

Code # E267

Fessin Electric

TO: All Contributing Employers

Gentlemen:

Shown below is the statement of contributions from your firm deposited to the funds indicated during the 1974 calendar year.

Local 363 Welfare Fund "E"	$ 502.00
Local 363 Pension Fund "E"	272.83
Local 363 Annuity Fund "E"	69.00

If there are any discrepancies between this statement and your records, please notify our accountant:

Barry Surett, CPA
83 Victoria Drive
Clark, N. J. 07066

Sincerely,

Edward J. Ferrari

Edward J. Ferrari
Fund Operations

EJF:jk

EMPLOYER
REMITTANCE REPORT

150 FIFTH AVENUE
N. Y. C., N. Y. 10011
989-7944

EMPLOYER
CODE NUMBER: -267

Name of Employer: Gossin Electrical Contractors, Inc This Report Covers The Period: Oct. 1, 1975 to Oct. 31, 1975

Employer Address: 625 E. 137th St., Bronx, N.Y. Report Completed by: Stephanie Gourdine Title: Bookkeeper

MEMBER'S FULL NAME (LAST NAME) (FIRST NAME)	MEMBER'S SOC. SEC. NO.	LOCAL 363 WELFARE FUND "E"		* LOCAL 363 PENSION FUND "E"		* JOINT INDUSTRY FUND "E"		* LOCAL 363 ANNUITY FUND "E	
		TOT. HOURS WORKED	AMOUNT CONTRIBUTED	TOTAL EARNINGS	AMOUNT CONTRIBUTED	TOTAL EARNINGS	AMOUNT CONTRIBUTED	NO. DAYS WORKED	AMOUNT CONTRIBUTE
Tchernoff, Norman	107-32-8192	184	4[illegible].68	1405.00	44.85	1405.0[illegible]	14.05	23	29.90
Moreno, Orlando	094-46-3355	120	32.40	504.00	15.12	504.0[illegible]	5.04	15	19.50
Moreno, Clarence	422-74-4593	120	32.40	688.35	20.65	688.35	6.88	15	19.50
Wheeler, Casper	131-40-0162	120	32.40	756.00	22.68	756.0[illegible]	7.56	15	19.50
Perkins, Al	129-42-1358	152	41.04	699.24	20.97	699.24	6.99	19	24.70
TOTALS			107.92		124.27		41.42		113.1

INSTRUCTIONS
this form each month.
show your Code Number.
Number must be listed
n copy for your records.

CHECK NO. 2982 CHECK NO. 2983 CHECK NO. 2984 CHECK NO. 2985

* IF REQUIRED BY COLLECTIVE BARGAINING

EMPLOYER
REMITTANCE REPORT

Qccx 4 yr. Ltr 1/19/76

150 FIFTH AVENUE
N. Y. C., N. Y. 10011
989-7944

Name of Employer: Gessin Electrical Contractors This Report Covers The Period: December 1, 1975 to Dec. 31, 1975

Employer Address: 791 E. 139th St., Bronx, N.Y. Report Completed by: Stephanie Gourdine Title:

MEMBER'S FULL NAME (LAST NAME) (FIRST NAME)	MEMBER'S SOC. SEC. NO.	LOCAL 363 WELFARE FUND "E"		* LOCAL 363 PENSION FUND "E"		* JOINT INDUSTRY FUND "E"		* LOCAL 363 ANNUITY FUND "E"	
		TOT. HOURS WORKED	AMOUNT CONTRIBUTED	TOTAL EARNINGS	AMOUNT CONTRIBUTED	TOTAL EARNINGS	AMOUNT CONTRIBUTED	NO. DAYS WORKED	AMOUNT CONTRIBUTED
Teherneff, Herman	117-32-8192	160	40.20	1000.00	39.00	1000.00	13.00	20	36.00
Moreno, Orlando	094-46-3355	192	51.84	806.40	24.19	806.40	8.06	24	45.60
Romero, Lawrence	422-74-4593	176	47.52	1009.58	30.28	1009.58	10.09	22	41.89
Wheeler, Casper	131-[illegible]-0162	176	47.52	1008.80	30.26	1008.80	10.08	22	41.80
Perkins, Al	129-42-1358	184	49.68	824.78	24.74	824.78	8.24	23	41.70
Jones, Kenneth	244-82-4203	176	47.52	652.52	19.57	652.52	6.52	22	41.80
Greenberg, Marc	109-44-9497	176	47.52	1009.80	30.29	1009.80	10.09	22	41.80
Ramon, Winston	124-36-9973	136	36.72	910.35	27.31	910.35	9.10	17	32.30
TOTALS		361.52		225.[illegible]		75.18		326.80	
		CHECK NO. 3210		CHECK NO. [illegible]		CHECK NO. 3212		CHECK NO. [illegible]	

INSTRUCTIONS
1. Complete this form each month.
2. Be sure you show your Code Number.
3. Social Security Numbers must be listed.
4. Keep the bottom copy for your records.
5. You must use four separate checks.

* IF REQUIRED BY COLLECTIVE BARGAINING

47

46

894

GESSIN ELECTRICAL CONTRACTORS INC.
625 EAST 137TH STREET
BRONX, N. Y. 10454

April 9 1974 1-142/210

PAY TO THE ORDER OF Local 363 Welfare Fund "E" $24 XXX

Twenty four and XXX/100 DOLLARS

FRANKLIN NATIONAL BANK
1800 WILLIAMSBRIDGE ROAD
BRONX, N.Y.

⑆021001482⑆ 041002563 6⑈ ⑈00000 2430⑈

GESSIN ELECTRICAL CONTRACTORS INC.
625 EAST 137TH STREET
BRONX, N. Y. 10454

893

April 9 1974 1-142/210

PAY TO THE ORDER OF Local 363 Welfare Fund "E" $108 73 XXX

One hundred and eight 73/100 XXX DOLLARS

FRANKLIN NATIONAL BANK

⑆021001482⑆ 041002563 6⑈ ⑈00000 10873⑈

GESSIN ELECTRICAL CONTRACTORS INC.
625 EAST 137TH STREET
BRONX, N. Y. 10454

892

April 9 1974 1-142/210

PAY TO THE ORDER OF Local 363 Welfare Fund "E" $174 96 XXX

One hundred seventy four 96/100 XXX DOLLARS

FRANKLIN NATIONAL BANK
1800 WILLIAMSBRIDGE ROAD
BRONX, N.Y.

⑆021001482⑆ 041002563 6⑈ ⑈00000 17496⑈

GESSIN ELECTRICAL CONTRACTORS INC.
625 EAST 137TH STREET
BRONX, N.Y. 10454

CC 5/15/20 891
PA 1/18/76

April 9 1974 1-142/210

PAY TO THE ORDER OF Annuity Fund "E" $36 XX

Thirty six and XX/100 XXX DOLLARS

FRANKLIN NATIONAL BANK
1800 WILLIAMSBRIDGE ROAD
BRONX, N.Y.

⑆021001482⑆ 041002563 6⑈ ⑈00000 3622⑈

GESSIN ELECTRICAL CONTRACTORS INC.
625 EAST 137TH STREET
BRONX, N. Y. 10454

2367

1-3-75
1-31-75

TOTAL OF INVOICES
LESS ___ % DISCOUNT
LESS FREIGHT
LESS
TOTAL DEDUCTIONS
AMOUNT OF CHECK

May 16 1975 1-148/210

PAY TO THE ORDER OF Local #3 Benefit Fund "E" $235.05

Two Hundred Thirty-five and 05/100 DOLLARS

European-American Bank
1800 Williamsbridge Road, Bronx, N. Y. 10461

⑆021001481⑆ 04⑈02563 6⑈ ⑈00000 23505⑈

GESSIN ELECTRICAL CONTRACTORS INC.
625 EAST 137TH STREET
BRONX, N. Y. 10454

2365

1-3-75
1-31-75

TOTAL OF INVOICES
LESS ___ % DISCOUNT
LESS FREIGHT
LESS
TOTAL DEDUCTIONS
AMOUNT OF CHECK

May 16 1975 1-148/210

PAY TO THE ORDER OF Local #3 Benefit Fund "E" $226.80

Two Hundred Twenty-six and 80/100 DOLLARS

European-American Bank
1800 Williamsbridge Road, Bronx, N. Y. 10461

⑆021001481⑆ 04⑈02563 6⑈ ⑈00000 22680⑈

GESSIN ELECTRICAL CONTRACTORS INC.
625 EAST 137TH STREET
BRONX, N. Y. 10454

2364

1-3-75
1-31-75

TOTAL OF INVOICES
LESS ___ % DISCOUNT
LESS FREIGHT
LESS
TOTAL DEDUCTIONS
AMOUNT OF CHECK

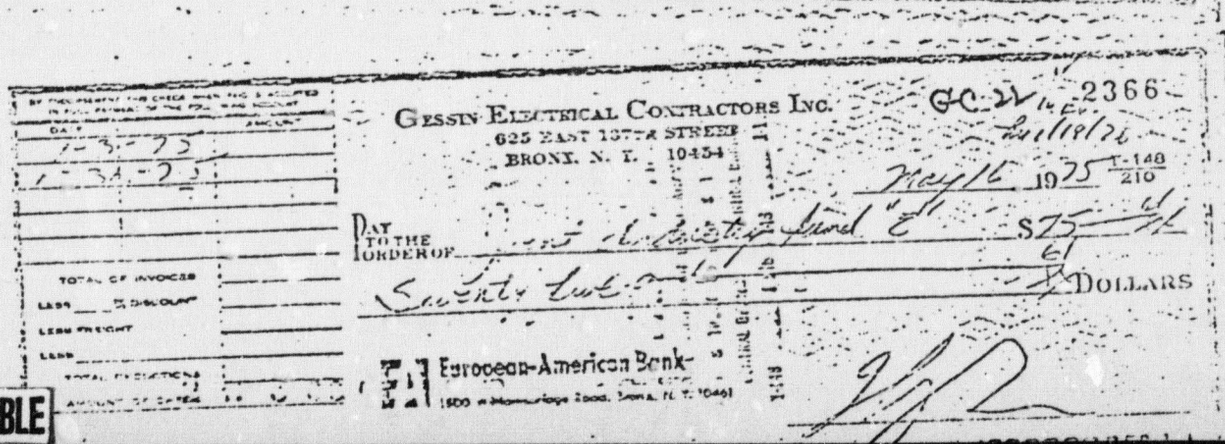
May 16 1975 1-148/210

PAY TO THE ORDER OF Local #3 Welfare Fund "E" $395.04

Three Hundred Ninety-five and 04/100 DOLLARS

European-American Bank
1800 Williamsbridge Road, Bronx, N. Y. 10461

⑆021001481⑆ 04⑈02563 6⑈ ⑈00000 39504⑈



GESSIN ELECTRICAL CONTRACTORS INC.
625 EAST 137TH STREET
BRONX, N. Y. 10454

2366

1-3-75
1-31-75

TOTAL OF INVOICES
LESS ___ % DISCOUNT
LESS FREIGHT
LESS
TOTAL DEDUCTIONS
AMOUNT OF CHECK

May 16 1975 1-148/210

PAY TO THE ORDER OF Local #3 Welfare Fund "E" $75.61

Seventy-five and 61/100 DOLLARS

European-American Bank
1800 Williamsbridge Road, Bronx, N. Y. 10461

⑆021001481⑆ 04⑈02563 6⑈ ⑈00000 07561⑈

BEST COPY AVAILABLE

BEFORE THE NATIONAL LABOR RELATIONS BOARD

- -x

In the Matter of:

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, : 2-CP-539

-and-

GESSIN ELECTRICAL CONTRACTORS,INC. :

- x

26 Federal Plaza
New York, New York
January 19, 1976

The above-entitled matter came on for hearing at 11:45 o'clock A.M.

BEFORE:

ARTHUR LEFF, Administrative Law Judge

APPEARANCES:

IRWIN M. PORTNOY, ESQ.,
Attorney for Gneral Counsel
26 Federal Plaza
New York, New York

MENAGH,TRAINOR and ROTHFELD, ESQS.,
Attorneys for the Respondent
130 East 40th Street
New York, New York
BY: NORMAN ROTHFELD, ESQ., of Counsel
and BRIAN HARMS

I N D E X

WITNESSES	DIRECT	CROSS
Harvey Gessin	25	64
Norman Rothfeld	74	84

E X H I B I T S

GENERAL COUNSEL'S	IN EVIDENCE
1	4
1-G	4
2	27
3	36
4	40
5	43
6 through 22	44

ooo

P R O C E E D I N G S

JUDGE LEFF: The hearing will come to order.

This is a formal hearing before the National Labor Relations Board in the matter of Local 3, International Brotherhood of Electrical Workers, AFL-CIO and Gessin Electrical Contractors, Inc., Case Number 2-CP-539.

The Administrative Law Judge conducting this hearing is Arthur Leff, L-e-f-f.

Will counsel for the respective parties please state their appearances in the following order.

For the General Counsel?

MR. PORTNOY: Irwin M. Portnoy, P-o-r-t-n-o-y.

JUDGE LEFF: For the Respondent?

MR. ROTHFELD: Menaugh,Trainor and Rothfeld and Brian Harms .

JUDGE LEFF: Off the record.

(Discussion off the record.)

JUDGE LEFF: On the record.

Introduce the formal papers, please.

MR. PORTNOY: I move the admission of General Counsel Exhibit 1, consisting of the formal papers in this case.

JUDGE LEFF: Any objection?

Hearing none, the formal papers which have been

marked General Counsel 1 are admitted.

(Documents received in evidence as General Counsel's Exhibit 1, of this date.)

MR. PORTNOY: I would like to move the introduction of General Counsel's Exhibit 1-G as an addition to the formal papers.

It consist of notice of motion to amend the complaint in this case.

JUDGE LEFF: Any objection?

No objection to the admendment, Exhibit 1-G is admitted.

(Document marked General Counsel's Exhibit 1-G received in evidence, of this date.)

JUDGE LEFF: I want to ask you, without passing on whether 2-D can be supported, is that enough to establish commerce?

You contend, I take it, that your amendment to 2-C if supported by proof, would alone be sufficient to establish commerce and that you really don't need the allegations of 2-D?

MR. PORTNOY: You see, in Federal Court 2-C reflects 1947 and we would contend that that is enough, but Mr. Rothfeld took the position in Federal Court that '74 was not relevant with regard to Gessin's operations and in order to remove the

commerce issue from the case and get it nailed down we are adding 2-D.

Now, with respect to the allegation there it is sufficient if Gessin does business for a firm which itself is in interstate commerce.

JUDGE LEFF: But you don't allege that it is in interstate commerce, do you?

All you allege is that the firm annually performs construction contracts outside the state.

MR. PORTNOY: Right.

JUDGE LEFF: You don't even state the amount.

Suppose they only do one dollar s worth outside the state?

Do I miss a point?

MR. PORTNOY: Yes.

Maybe my pleading is defective.

The firm annually performs construction contracts outside the state in excess of $50,000.

JUDGE LEFF: Well, do you allege that?

I don't read it that way.

MR. PORTNOY: Okay, it should read which enterprise annually performs construction contracts outside the state wherein said enterprise is located valued at an excess of $50,000.

JUDGE LEFF: Now, I take it from what you just

said that you wish to amend your amendment, paragraph 2-D of your amendment in the respect just stated by you, to add at the end of that, "valued in excess of $50,000"?

MR. PORTNOY: That is correct, valued.

Strike out the period and add the words -- the period after located and add the words, "valued at in excess of $50,000."

JUDGE LEFF: Any objection to that amendment?

MR. ROTHFELD: None.

JUDGE LEFF: The amendment is granted.

Now, one other thing.

I just want to be sure that we all understand this, is Graphic Building Systems a New York corporation?

MR. PORTNOY: We have a witness here, Mr. Silverman.

You are Graphic?

MR. SILVERMAN: Yes, sir.

MR. PORTNOY: Can we --

JUDGE LEFF: Off the record.

(Discussion off the record.)

JUDGE LEFF: On the record.

MR. PORTNOY: After the word Inc. and before the word which insert the following words:

"A New York corporation with its principal office and place of business located at 909 Third Avenue,

New York, New York."

JUDGE LEFF: You are further amending 2-D in the respect just mentioned?

MR. PORTNOY: That is correct.

JUDGE LEFF: That is in addition of 2-D that you noted before on the record.

Any objection to the amendment?

MR. ROTHFELD: None.

JUDGE LEFF: Hearing none the amendment is allowed.

Now, are you ready?

I would like opening statements.

MR. PORTNOY: Yes, Your Honor.

Before we went on the record Mr. Rothfeld and I agreed to certain stipulations.

With respect to paragraph 2-C, in Federal Court Mr. Rothfeld and I agreed to the admission of certain exhibits which I have here.

JUDGE LEFF: Before that I would like opening statements.

MR. PORTNOY: All right.

The case is a recognitional organizational picketing case.

Local 3 has, for some time, been attempting to organize Gessin Electrical employee's and Respondent admits that on or about February 26, 1973, Gessin and

Local 363 entered into a collective bargaining agreement covering Gessin's Electrical construction employees.

Now, Local 363, International Brotherhood of Teamsters, Warehousemen and Helpers of America that is, and thereafter, on or about September 11, 1973, Local 3, IBW, Respondent in this case, filed a petition with the New York State Labor Relations Board seeking certification as a representative of Gessin's Electrical construction employees, and an election was held pursuant to that petition filed before the State Board.

Local 3, IBW lost that election and the complaint alleges and Respondent admits that on November 30, 1973, the New York State Labor Relations Board dismissed Local 3's petition because at the election Local 3 was voted down by the employees.

JUDGE LEFF: You really don't need that allegation for an 8-B7.

MR. PORTNOY: Of course not, but it forms a factual background to this case.

Now, General Counsel alleges, and Respondent admits that on February 1, 1974 Gessin recognized Local 363 and entered into a contract which contract terminates November 14, 1976.

Now, despite the fact that that contract for Local 363 was an existence the Respondent, in July

1975, by Walter Ineson, Business Representative, demanded that Respondent Gessin recognize it as the collective bargaining representative of its electrical construction employees.

Now, with respect to that allegation, Mr. Rothfeld stated in Federal Court as follows and I am reading from page ten of the record.

JUDGE LEFF: When you say he stated in the Federal Court, was this in a --

MR. PORTNOY: In an injunction case.

JUDGE LEFF: A 10-J was it?

MR. PORTNOY: 10-L, the same procedure.

"Finally, with respect to the allegation that the union demanded recognition, what the union demanded was that there be bargaining after two other events antedating such bargaining. First, that the employees of Gessin all execute and send to the Teamsters by certified mail the resignations of their membership if in fact they are members or as many of them as are, and secondly, that Mr. Ineson, the business representative of the union, be given an opportunity by Mr. Gessin to see the employees, hand them union designation cards and have them execute and after Mr. Ineson would receive a majority of those cards then Mr. Ineson was authorized to negotiate with Gessin Electrical Company."

Now, I am perfectly willing to stipulate that Ineson had such a conversation with representatives of Gessin Electrical Contractors.

JUDGE LEFF: Would you contend that that constituted a demand for recognition?

MR. PORTNOY: Absolutely.

JUDGE LEFF: Go ahead.

MR. PORTNOY: In any event, I contend -- let me go on with the chronology.

Now, thereafter --

JUDGE LEFF: If you can prove what you have in 10 wouldn't that be enough?

If you can prove what you have in the 10th paragraph of your complaint?

MR. PORTNOY: Yes.

If I hook up Ineson's conversation with paragraph 10 I am contending that it is sufficient.

JUDGE LEFF: Even if you don't hook it up isn't 10 alone enough if you can prove it?

MR. PORTNOY: Oh, sure, yes.

JUDGE LEFF: All right.

MR. PORTNOY: Sure.

Now, paragraph 10 alleges that the Respondent picketed Gessin's premises and construction sites which read, "employees of Gessin Electric join Local Union Number

3 for better wages, conditions and benefits.

Local Union Number 3 IBW, AFL-CIO, 158-11 Jewel Avenue, Flushing, 11365, 591-4000."

With respect to that, Mr. Rothfeld stated in Federal Court that he was perfectly willing to stipulate as follows and I will read another portion of the record:

MR. PORTNOY: "Now, I will enter into the stipulation. We also reached another stipulation in chambers, Your Honor, and that is that Mr. Rothfeld says that the purpose of picketing is for the purposes of obtaining recognition of Local 3."

MR. ROTHFELD: "Absolutely not, sir."

MR. PORTNOY: "Okay. Well, it is organizational."

THE COURT: "Organizational"?

MR. PORTNOY: "Right."

THE COURT: "So stipulated?"

MR. ROTHFELD: "So stipulated."

JUDGE LEFF: Remember, that is an opening statement. If you want to get that stipulation in you will have to do it later.

MR. PORTNOY: I am perfectly willing to enter into the same stipulation.

JUDGE LEFF: Let us get the opening statement.

MR. PORTNOY: Now, we contend that the sign

alone indicates that there is an organizational objective because it is directed to the employees, asking the employees to come over and join.

The picketing had lasted until at least the date of the Federal Court action that was brought and we were in Federal Court on November the 21st, 1975.

JUDGE LEFF: Will you state for the record what happened to that injunction proceeding?

MR. PORTNOY: There were certain stipulations entered into on November 21st, 1975.

The matter was set down for further evidentiary hearing on January 15, 1976.

Mr. Rothfeld and I agreed and Mr. Detsky for the charging party agreed that Mr. Rothfeld would cease picketing -- not Mr. Rothfeld, Mr. Rothfeld's client being Local 3, would cease picketing until a Board decision was reached in this matter.

We further stipulated that this would not constitute, his agreement would not constitute an admission that they had committed a violation of the National Labor Relations Act.

I am finished with my opening statement, Your Honor.

JUDGE LEFF: Well, I'm sure you won't agree that the case is as simple as Mr. Portnoy makes out.

MR. ROTHFELD: No, Your Honor.

JUDGE LEFF: Let me have your position.

MR. ROTHFELD: First, we contest the interstate commerce.

Secondly, I think Mr. Portnoy is inadvertently incorrect with respect to the duration of the picketing.

The picketing was sporadic, and not continuous.

While that has no legal affect on the case nor on your decision, nevertheless the facts should be correct on the record.

There was no continuous picketing up until the date of the Section 10-L hearing.

I don't have the exact dates of the picketing here.

Perhaps Mr. Portnoy can further ascertain them.

I don't deem them legally significant.

We contend that there was no contract in effect after November 14, 1973 between the employer and the Teamsters, and that at some subsequent date which I think was rather recently, a document was entered into dated February 1, 1974, which, in our view, does not amount to a contract.

JUDGE LEFF: You mean it was entered into about the time of the picketing?

MR. ROTHFELD: After the picketing started, and that that document which Your Honor will see, whether as

an exhibit or or as rejected exhibit, does not amount to a contract.

We will stipulate --

JUDGE LEFF: You say even if it were entered into on February 1, 1974, as alleged, because of its form of content you contend --

MR. ROTHFELD: Yes, Your Honor.

JUDGE LEFF: -- it doesn't constitute a contract that could operate as a contract bar in a representation proceeding?

MR. ROTHFELD: Yes, Your Honor.

We contend that document still does not operate as a contract.

We will stipulate that there was organizational picketing which, if there were interstate commerce here, and if that contract were in effect when the picketing started and were called to the attention of the union, it would constitute a violation of 8(b)(7).

One other sentence, Your Honor, please.

I think under all the circumstances of this case, Your Honor might well choose to find that in any event it would not suit the purposes of the Act to find a violation.

That is an additional defense.

JUDGE LEFF: Well, of course, if what you say is true I don't see how it could be a violation.

If there were no contract in effect at that time or a phoney contract --

MR. ROTHFELD: If Your Honor please, our position is even if Your Honor were to find that a technical violation could be spelled out, that under all the circumstances that the record will show, that an unfair labor practice should not be found.

JUDGE LEFF: Why?

MR. ROTHFELD: I'm sorry.

JUDGE LEFF: Why?

I mean if they established the elements of an unfair labor practice why shouldn't I find it.

MR. ROTHFELD: Well, Your Honor, as I understand it, Your Honor has the discretion even where the elements of an unfair labor practice are spelled out to determine whether it would be effectuating the purposes of the Act to find such an unfair labor practice.

And Your Honor will best understand that argument, I believe, if made at the closing.

JUDGE LEFF: I see.

What you are telling me in effect is that there are certain circumstances present in this case that you have withheld from me so far that will persuade me by the time the case is finished that if a technical violation is made that no order should be entered.

MR. ROTHFELD: Yes, Your Honor.

JUDGE LEFF: Are you keeping it a mystery from me alone or do you want to keep it a mystery from the General Counsel?

MR. ROTHFELD: If Your Honor please, it is not a question of keeping it a mystery.

General Counsel is aware of the situation.

I made him aware of it.

I believe that it would take some number of minutes to explain it and I think it best be done in the form of testimony.

JUDGE LEFF: I am willing to be patient.

We will take a five minute maximum recess.

(Short recess taken.)

JUDGE LEFF: The hearing will come to order.

MR. PORTNOY: Your Honor, I have at this point one further amendment.

Paragraph 10 alleges presently that since on or about October 28th and that 28th should be changed to 8, Respondent picketed.

JUDGE LEFF: Any objection.

MR. ROTHFELD: Well, I don't object to the amendment, Your Honor, but I deny the date.

JUDGE LEFF: Very well, the amendment is granted.

MR. PORTNOY: Before the hearing opened, Mr.

Rothfeld and I had arrived at some stipulations to paragraph 2-C of the complaint as amended.

I would like to restate that stipulation.

Mr. Rothfeld agreed that during the year 1974 Gessin, in the course and conduct of its business purchased and caused to be transferred to its place of business electric cable, switches and other goods and materials valued at in excess of $50,000, which goods and materials valued in excess of $50,000 were transported and delivered to said firms directly from outside the State of New York.

We can stipulate that the firms involved --

MR. ROTHFELD: May we go off the record a moment, please?

JUDGE LEFF: Off the record.

(Discussion off the record.)

JUDGE LEFF: On the record.

MR. PORTNOY: Strike the words, "we can stipulate the firms involved."

" Valued at in excess of $50,000 were transported and delivered directly from outside the State of New York."

MR. ROTHFELD: So stipulated.

MR. PORTNOY: We can stipulate further that during 1974 Gessin, in the course in the course and conduct of its business operations, performed electrical

construction contracts at various construction sites located in the State of New York valued in excess of $50,000 for Graphic Building Systems, Inc., a New York corporation with its principal office and place of business located at 909 Third Avenue, New York, New York, which enterprise annually performs construction contracts outside the state wherein said enterprises located valued at in excess of $50,000.

JUDGE LEFF: Do you start that off with 1974?

MR. PORTNOY: Yes.

JUDGE LEFF: Not 1975?

MR. PORTNOY: Yes.

MR. ROTHFELD: So stipulated.

MR. PORTNOY: I propose the same stipulation as the prior stipulation covering the year 1975.

MR. ROTHFELD: Stipulated.

JUDGE LEFF: Stipulation is approved.

MR. PORTNOY: As far as I am concerned, Your Honor, I don't think I have to prove anything further to Graphic Building Systems.

If Mr. Rothfeld wants to examine Mr. Silverstein who has appeared here as a witness under subpoena --

JUDGE LEFF: The stipulation you just read, I didn't follow it entirely.

It did state the Graphic was a New York corporation

and its place of business was in New York?

MR. PORTNOY: Right.

JUDGE LEFF: It followed your pleadings as amended?

MR. PORTNOY: That is right, that Graphic did business with Gessin within the State of New York, and Graphic itself performed a construction contract outside the State of New York valued in excess of $50,000.

JUDGE LEFF: You are satisfied that that meets the Board's discretionary commerce standard?

You don't need to put in any more but I would like a cse on that.

MR. PORTNOY: All right, I can cite you Seamans Mailing Service, 122 NLRB 81.

JUDGE LEFF: Do you have anything more precise than that?

MR. PORTNOY: Yes, if Your Honor will permit me in a couple of minutes I can pull the case out.

JUDGE LEFF: You don't have to do it now.

Do it at the close of the case or in your brief.

MR. PORTNOY: At this point I might say this, these standards for jurisdiction are that the Board asserts jurisdiction over all non-retail operations which have an annual out flow or in flow across state

lines of at least $50,000 worth of such out flow or in flow being recorded as direct or indirect.

Indirect out flow is defined as the sale of goods or services to users meeting any of the Board's jurisdictional standards except the indirect out flow or indirect in flow standard.

In this particular case we have Graphic Building Systems which is a New York corporation performing work outside the State of New York directly.

It is therefore directly engaged in interstate commerce in and of itself.

We have the stipulation that Gessin in 1974 and 1975 performed electrical subcontracts for Graphic within the State of New York.

JUDGE LEFF: I am more concerned with Graphic.

Suppose you have a Delaware corporation that does all its business in New Jersey and does $50,000 worth of business in New Jersey?

Simply because it is a Delaware corporation, incorporated in Delaware and having its principal place of business, is that enough to make that company an interstate company?

MR. PORTNOY: You are talking about a completely different case, Your Honor, than the instant case.

JUDGE LEFF: Why?

MR. PORTNOY: In the instant case we have a New York corporation.

JUDGE LEFF: I'm talking about Graphic here.

MR. PORTNOY: Graphic, a New York corporation itself does business outside its home state.

It is therefore working in interstate commerce directly in and of itself.

If it were a production company producing goods and it had a factor here and it produced goods here and shipped it outside the State of New York directly to another state, it would be considered performing work directly.

THE WITNESS: You say the certificates exactly say --

MR. PORTNOY: The certificates exactly say as the production of goods.

You have a New York corporation whose headquarters are here, the thinking is here, the design of the building is here and all of the engineering details and things that go into the construction of the building are here.

JUDGE LEFF: I'm sure you must have a case directly on those to support that proposition?

Will you cite it to me?

MR. PORTNOY: All right, I will try.

I think that Seaman's is sufficient.

JUDGE LEFF: Seaman's is very general.

Okay.

I don't say you are wrong, but I would feel more comfortable if I had a case on it.

MR. PORTNOY: All right.

May we go off the record?

JUDGE LEFF: Off the record.

(Discussion off the record.)

JUDGE LEFF: On the record.

MR. PORTNOY: Your Honor, Mr. Rothfeld and I have agreed with respect to paragraph 10 that picketing occurred with signs as set forth in paragraph 10 at various times in October, 1975, November, 1975, and that the purpose of said picketing was organizational, that is, an attempt to organize Gessin's employees.

JUDGE LEFF: The stipulation is approved.

MR. PORTNOY: Your Honor, as I mentioned before, I called Mr. Silverstein as a witness for Graphic Building Systems and in view of the stipulation that we have entered into I do not see any purpose of calling Mr. Silverstein on direct examination.

If Mr. Rothfeld wishes to examine Mr. Silverstein for any purpose at all I have no objection.

JUDGE LEFF: Do you wish to cross examine him?

MR. ROTHFELD: If Your Honor please, since there was no direct examination and the stipulation does not allege or include any suggestion that anything whatsoever that the employer did for Graphic had any interstate impact, any impact outside the State of New York, there can be no such allegation on direct, I don't see any point in any cross examination.

I merely alleged that the stipulation does not suffice to establish commerce.

JUDGE LEFF: Do you have any cases on that point?

MR. ROTHFELD: No, Your Honor.

I believe that the burden is on the Board to establish commerce.

JUDGE LEFF: Yes, that is correct, but do you have any cases to support your legal proposition?

MR. ROTHFELD: I do not, Your Honor.

JUDGE LEFF: Will you try to get me some?

MR. ROTHFELD: Your Honor, I don't know whether the Board has ever sought to ground commerce on an allegation comparable to the stipulation.

I may have but I don't know.

JUDGE LEFF: Mr. Portnoy has promised to give me some citations if he can find them.

MR. ROTHFELD: If he has got them then it is in his favor.

JUDGE LEFF: You don't think that research by you or by your very capable assistant who is sitting at your left might uncover any cases contrary to ones that Mr. Portnoy has promised, do you?

MR. ROTHFELD: If Your Honor please, if Mr. Portnoy does come up with a case which suggests that there is an interstate commerce basis in this case I will ask leave to do research to distinguish that case.

JUDGE LEFF: All right.

The next witness.

MR. PORTNOY: You are released, Mr. Silverstein.

JUDGE LEFF: Off the record.

(Discussion off the record.)

JUDGE LEFF: On the record.

MR. PORTNOY: I would like to call Harvey Gessin, please.

Whereupon,

HARVEY GESSIN

having been called as a witness, and having been first duly sworn by the Judge, was examined and testified as follows:

JUDGE LEFF: State your full name, please?

THE WITNESS: Harvey Gessin.

JUDGE LEFF: And your address, please, Mr. Gessin?

THE WITNESS: 5800 Arlington Avenue, the Bronx.

DIRECT EXAMINATION

Q (By Mr. Portnoy) Mr. Gessin, you are employed by Gessin Electrical Contractors, Inc.?

A Yes.

Q In what capacity?

A I'm the secretary treasurer.

Q I show you this document which has been marked as General Counsel's Exhibit 2 and ask you if your signature appears at any place on that document?

A Yes, it does.

Q Where?

A On the last page.

Q Would you tell us what this document is?

A This is a contract between Local 363 of the International Brotherhood of Teamsters and Gessin Electrical Contractors.

Q Now, is there another signature on the page where your signature appears?

A Yes, there is.

Q Where was this contract, where was General Counsel's Exhibit 2 signed?

A It was signed in the offices of Local 363 on Fifth Avenue.

Q Who was present at that time?

A Myself, and Aaron -- I don't remember his last

name, I don't recall it and I can't recollect it by the signature.

I can't recollect his name on the signature.

JUDGE LEFF: Speak up, please.

A (Continuing) I think it is Rosenfeld or Rosenbach.

Q Is the name Kleinman familiar to you?

A Yes, I guess it is.

MR. ROTHFELD: I suggest that is a bit leading.

JUDGE LEFF: Overruled, go ahead.

Q Will you tell us what happened at the Local 363 offices?

JUDGE LEFF: Do we have a date for this?

When was this meeting at which the contract was signed?

THE WITNESS: February 26, 1973.

JUDGE LEFF: '70 what?

THE WITNESS: '73.

Q (By Mr. Portnoy) Will you tell us what happened in the Local 363 offices at that time?

A Yes, I arrived at their offices, I reviewed the contract with Mr. Kleinman and we both signed it.

MR. PORTNOY: I offer General Counsel's Exhibit 2 in evidence.

MR. ROTHFELD: Which one?

This one (indicating)?

MR. PORTNOY: Yes.

MR. ROTHFELD: No objection.

JUDGE LEFF: General Counsel's Exhibit 2 is admitted.

(General Counsel's Exhibit 2 received in evidence, of this date.)

Q (By Mr. Portnoy) I show you this document which I have marked as General Counsel's Exhibit 3 and ask you if your signature appears thereon?

A Yes, it does.

Q When was it signed?

A February 1, 1974.

MR. ROTHFELD: Let the record note that the witness read the date from the document.

JUDGE LEFF: The record will so note.

Q Where was it signed, this document?

A It was signed in the offices of Local 363 on Fifth Avenue.

Q Who was present?

A Myself and Gordon Canizzio.

Q Who is Gordon Canizzio?

A He is the president of Local 363.

Q Would you tell us what happened in Local 363's offices at the time that General Counsel's Exhibit 3 was signed?

A I entered the offices of Mr. Canizzio, he presented the documents to me, we discussed them and we both signed them.

MR. PORTNOY: I offer General Counsel's Exhibit 3 in evidence.

JUDGE LEFF: Show it to counsel.

MR. PORTNOY: He has a copy.

MR. ROTHFELD: May I have a voir dire?

JUDGE LEFF: Just hold it up.

Go ahead.

VOIR DIRE EXAMINATION

Q (By Mr. Rothfeld) Mr. Gessin, do you recall what day of the week you visited the union premises in connection with this document?

A No, I don't, no.

Q Do you recall the time of day?

A It was in the morning.

Q Do you recall how you happened to pay a visit that day to the union?

A Sure, we had a previous appointment or we previously made the appointment and I showed up at the time we set for it.

Q How did you happen to make the appointment?

A Mr. Canizzio contacted me.

JUDGE LEFF: Would you keep your voice up?

A (Continuing) Mr. Canizzio contacted me.

Q What did he say to you and what did you say to him?

A He says, "I'd like you to come down to view our new agreement", and I said, "I will make a date to come down and see you."

Q When did this c nversation occur?

A Sometime in late January.

Q 1974?

A Right.

Q Who set the date?

A We both did, mutual agreement.

Q What happened when you went to the offices?

A As I said, we sat down, we dicussed the terms of the agreement and we both signed it.

Q Do you recall any of this discussion.

A In reference to what?

Q Sir, you testified that you discussed this agreement.

A That's right.

Q Do you recall any of the details of this discussion?

A In reference to what?

JUDGE LEFF: Wages, for example.

Q (By Mr. Rothfeld) Wages for example?

A The wages were to be determined at a later date.

JUDGE LEFF: Look at paragraph 2, number 2 of this agreement.

Was anything said at that time about any wage increase for the ensuing three year term?

THE WITNESS: No.

They were preparing a wage agreement to be accepted by the contractors, but it had not yet been presented.

Q Were wage increases discussed on that date?

A They indicated their intention of what they planned to do or planned to ask for, but nothing was finalized at the time.

Q Was anything else discussed other than wages?

A Various benefits.

Q Could you tell us what you remember was discussed?

A The men's vacation days, their annuity funds and the various funds they benefit from.

Q Do you remember anything specific that was discussed that day?

A I recall a few things but I don't know what you are looking for.

Q Sir, can you tell us what you recall, whether you think I'm looking for it or not?

A I don't remember anything specific.

Q About how long did you spend in Mr. Canizzio's office?

A I believe less than an hour.

Q Who was there?

A Myself and Mr. Canizzio.

There were a few other people in the office but not in our conversation.

Q Do you recall who any of them were?

A Pat Belantoni was present.

There were a few secretaries there, and a few other gentlemen that I'm not familiar with.

Q What happened to the documents that you signed?

A What happened to it?

Q Yes.

A I kept a copy of it and they had a copy of it.

Q How many copies did you sign?

A I don't recall.

Q Do you recall whether you signed more than one?

A No, I just remember signing, I don't how many copies.

Q Did you take a document with you from Mr. Canizzio's office?

A Yes, I did.

Q Where did you put it?

A Where did I put it?

Q Yes.

A In my briefcase.

Q What happened to it after you put it in your briefcase?

A I returned it to my office.

Q Where in your office?

A In my files.

Q Do you recall anything else that you did on February 1, 1974?

A Not offhand, no.

Q When did you see this document offered in evidence after February 1st, 1974, when was the next time you looked at it?

A Offhand, I wouldn't recall.

There really wouldn't be no cause for me to look at it again.

Q Did you look at it at anytime between February, 1974 and November, 1975?

A Yes.

Q Do you remember what month?

A I must have looked at it when I was being harassed by members of Local 3.

Q About when were you being harassed by members of Local 3?

A Early October, 1975.

Q Then your testimony is that you must have looked at this document in early October, 1975?

A Yes.

JUDGE LEFF: Why?

THE WITNESS: Because my attorneys asked to see it and I pulled it from the file and read it to myself before I submitted it to them.

Q (By Mr. Rothfeld) Before you submitted it to whom?

A To my attorneys.

Q To whom?

A Mr. Seymour Detsky.

Q When did you submit this document to Mr. Seymour Detsky?

A Sometime in October, '75.

Q Do you recall what part of October?

A No, I don't.

Q Do you recall whether it was the beginning of October or the end of October of 1975?

A It was probably towards the middle of October.

Q Probably towards the middle?

A Yes.

Q That is the best recollection you have?

A Yes.

MR. ROTHFELD: That is all.

JUDGE LEFF: Any further questions?

MR. ROTHEELD: Nothing further.

JUDGE LEFF: What wages did you pay at the time in February, 1974?

THE WITNESS: I paid the wages of the contract that was in effect at that time.

JUDGE LEFF: Were those the same wages as were provided for by the yearly contract?

THE WITNESS: Right, right.

JUDGE LEFF: Has there been any change in wages since?

THE WITNESS: Yes.

JUDGE LEFF: How were the new wages determined?

THE WITNESS: How were they determined?

They were submitted to the contractors association which reviewed the demands of Local 363 and they were ratified.

JUDGE LEFF: Your understanding with the union was that you would abide by the wages and conditions that were agreed upon through their negotiations with the Contractors Association?

THE WITNESS: Contractors Association, right.

Q (By Mr. Portnoy) Mr. Gessin, are you a member of the Contractors Association?

A No, I'm not.

Q But were you ever a member of the Contractors

Association?

A No, I was not.

MR. PORTNOY: I move the admission of General Counsel's Exhibit 3, Your Honor.

MR. ROTHFELD: I object on the grounds that I don't think the document has legal relevance.

Of course there is a credibility question which I believe --

JUDGE LEFF: Why doesn't it have relevance? I think it is material to this case.

It is certainly probably the most relevant thing he can put in.

MR. ROTHFELD: Well, of course, Your Honor will determine whether it constitutes a contract or the kind of contract which would constitute a bar here

JUDGE LEFF: It incorporates the terms of the previous contract which appears to the Administrative Law Judge to be a rather complete contract.

MR. ROTHFELD: It referred to an increase of, "cents per hour".

JUDGE LEFF: Which means nothing at all unless you read it in relationship to the paragraph that followed.

The objection is overruled.

General Counsel's Exhibit 3 is admitted.

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(Document marked General Counsel's Exhibit 3 received in evidence, of this date.)

Q (By Mr. Portnoy) Now, I show you some documents that I have marked as General Counsel's Exhibit 4 and ask you what they are?

A They are employer remittance reports for every month that we were members of 363 ~~pa~~rather, we are members of 363.

Q Who prepares those reports?

A My office staff.

Q What is done with these reports after they are prepared?

A Checks are made out for the proper amounts, recorded and then sent to Local 363.

Q Are these reports reports which are kept in the regular course of your doing business?

A Yes, they are.

MR. PORTNOY: I offer them in evidence.

MR. ROTHFELD: May I have a moment off the record?

JUDGE LEFF: Off the record.

(Discussion off the record.)

JUDGE LEFF: On the record.

VOIR DIRE EXAMINATION

Q (By Mr. Rothfeld) Mr. Gessin, in examining these documents I notice that for the month of August, 1975,

your company appears to show contributions to the Teamster Funds on behalf of one individual named Norman Chernoff?

A Yes.

Q Is that a correct statement of the number of employees for whom you contributed in the month of August, 1975?

A That is right.

Q I also note that for the entire month of September 1975, your company appears to have made a contributions to the Teamster Funds on behalf of the same one individual, Norman Chernoff?

A That's right.

Q And that is the total number for that month?

A That's right.

Q Then for the month of October, 1975, your company appears to have made contributions on behalf of five employees?

A That's right.

Q Continuing to the Teamster Funds.

Is it your testimony that with respect to each month the number of employees for whom you made contributions is correctly set forth in these documents?

A Yes, it is.

MR. PORTNOY: Excuse me, Your Honor, I object on the grounds that this is not proper voir dire.

It goes to the content of the documents themselves rather than their preparation.

JUDGE LEFF: What difference does it make?

He is going to get at it any way.

MR. ROTHFELD: I will finish soon.

Q (By Mr. Rothfeld) Is Norman Chernoff your foreman?

A He is one of them, yes.

MR. ROTHFELD: I object to the receipt of these documents in evidence on the grounds that the fact that the contractor chose to make contributions on behalf of certain employees to the Teamster Funds does not prove that there was a collective bargaining agreement in effect requiring the company to do so.

This option may have been exercised voluntarily as a business decision in order to keep the company's employees, for example, Mr. Norman Chernoff.

JUDGE LEFF: Isn't General Counsel's Exhibit Number 2, that is, the contract that was made in February, 1973, a contract which was later incorporated into General Counsel's Exhibit 3, and require such contributions?

MR. ROTHFELD: It does, Your Honor.

JUDGE LEFF: Well, don't the documents show there was an ongoing relationship and that the charging party continued to recognize and deal with Local 363

throughout the pertinent term in this proceeding?

MR. ROTHFELD: I recognize, Your Honor, that there was a contract in effect which expired November, 1973, and that thereafter the company, in view of these documents, appeared to have continued to make contributions to the Teamster Fund for some employees.

We nevertheless contend that the continuation of those contributions does not spell out a binding agreement to do so, merely that the employer chose to continue to do so for some employees, for example, Norman Chernoff.

JUDGE LEFF: Well, the binding agreement is [illegible] spelled out in the earlier two documents that General Counsel introduced and I take it that these documents, the documents that have been marked General Counsel's Exhibit 4 for identification, indicate that that relationship has not been abandoned.

MR. PORTNOY: That is correct.

As a matter of fact, they indicate, as Your Honor suggested, that the contracts which are General Counsel's Exhibit 2 and 3 have been performed by the employer and that there is an ongoing relationship.

JUDGE LEFF: The objection --

MR. ROTHFELD: Your Honor, I don't question the existence of relationship.

I question whether, after November, 1973 and

during the picketing there was a binding relationship, namely, a contract.

JUDGE LEFF: I know, but what he is relying on to show that is General Counsel's Exhibit 3, right?

MR. PORTNOY: That is correct.

MR. ROTHFELD: I understand that, Your Honor.

JUDGE LEFF: The objection is overruled.

General Counsel's Exhibit 4 is admitted into evidence.

(Documents marked General Counsel's Exhibit 4 received in evidence, of this date.)

Q (By Mr. Portnoy) Mr. Gessin, I call your attention to General Counsel's Exhibit 4 in evidence, and I would point out the numbers 1945, 1946, 1947.

What do those numbers refer to?

A They are the check numbers for the checks that were sent to 363 for the contributions in May of -- this would be, yes, '75 -- '74.

Q I show you a series of documents which I have marked as General Counsel's Exhibit 5.

Does your signature appear on General Counsel's Exhibit 5?

A Yes, it does.

Q Will you tell us what General Counsel's Exhibit 5 is?

A The first one is a check drawn to the Joint Industry Board Fund E for contributions in February of '74.

Q Would you indicate on General Counsel's Exhibit 4 if there is a corresponding check number on those remittance reports as reflecting your check number 891?

A Yes, right here.

MR. PORTNOY: May the record reflect the fact that in General Counsel's Exhibit 4 which will be submitted in its entirety there is a remittance report dated 3/9/74 with the number 891 next to it.

I move the admission of General Counsel's Exhibit 5.

MR. ROTHFELD: Is not 5 one of the documents which constituted General Counsel's Exhibit 4?

JUDGE LEFF: 5 are the checks.

MR. ROTHFELD: I'm sorry.

JUDGE LEFF: Are you having each check marked separately or as a group?

MR. PORTNOY: I will introduce these seriatim.

They are paper clipped because later on when they are read in connection with General Counsel's Exhibit 4 you will see that the paper clips will correspond to different remittance reports, that the remittance reports contained these checks numbers on them.

MR. ROTHFELD: May I have a brief voir dire?

JUDGE LEFF: Yes.

I assume you will want to, if these are admitted into evidence, to have copies made?

MR. PORTNOY: Yes,we can make the copies.

JUDGE LEFF: Unless the company doesn't object to having the originals introduced.

I imagine --

THE WITNESS: I would like the originals back.

VOIR DIRE EXAMINATION

Q (By Mr. Rothfeld) Mr. Gessin, is it your testimony that with respect to all these checks you sent contributions to the Teamster Funds for all the employees whom you had employed during the dates of these checks?

A Yes, it is.

Q So that during those months when the only beneficiary was Norman Chernoff, he was the -- he was your only employee at the time?

A That's right.

JUDGE LEFF: I don't understand that.

MR. ROTHFELD: No objection.

MR. PORTNOY: I move to strike it out.

It has no relevance.

JUDGE LEFF: I'm afraid I missed that.

What are you dealing with there?

MR. ROTHFELD: If I were to have elicited an

admission that these contributions were sent only for some of his employees, for example, Norman Chernoff and not for others, then that would bolster my hypothesis that this relationship with the Teamsters wherein contributions were made for some employees to the pension fund was not purusant to a binding agreement which would require contributions for everybody, but only with respect to some favorite if you like, Norman Chernoff.

JUDGE LEFF: I understand such testimony is that they sent contributions for all employees.

MR. ROTHFELD: That is correct, Your Honor, and I at this point have no way of rebutting that.

JUDGE LEFF: Do you have any objection to the introduction of General Counsel's Exhibit 5?

MR. ROTHFELD: I have the same objection as to relevancy that I do for Exhibit 4.

JUDGE LEFF: That objection is overruled for the same reasons that I overruled your objection with regard to General Counsel's Exhibit 4.

General Counsel's Exhibit 5 is admitted into evidence.

(Documents marked General Counsel's Exhibit 5 received in evidence, of this date.)

MR. PORTNOY: I would like to introduce at this point a series of exhibits.

These are checks and they are marked General Counsel's Exhibits 6 through 15 covering the period April, 1974, to May, 1975.

I have some additional which I have marked as G.C. Exhibit 15 through G.C. Exhibit 22.

I move their admission.

They are offered for the same purpose as General Counsel's Exhibit 5.

MR. ROTHFELD: If Your Honor please, my theory for objecting to these is the same as for the objection to 4 and 5.

JUDGE LEFF: Same ruling.

The exhibits that have been propered, namely, General Counsel's Exhibits 2 to 15 and General Counsel's Exhibit 15 through 22 are admitted.

(Series of documents marked respectively General Counsel's Exhibits 6 through 22 are received in evidence, of this date.)

JUDGE LEFF: Off the record.

(Discussion off the record.)

JUDGE LEFF: On the record.

MR. PORTNOY: The stipulation that we proposed is that General Counsel's Exhibits 23 through 34 consist

of checks evidencing payments made which are reflected in General Counsel's Exhibit 4 for various times in 1973.

MR. ROTHFELD: So stipulated.

JUDGE LEFF: That doesn't accomplish the object for which you asked the stipulation.

I don't want to clutter up the record with numerous exhibits that are unnecessary and have the Reporter take the time of marking each of them.

What I asked for was a stipulation from the Respondent that the General Counsel has available and can put in evidence checks reflecting that all payments that are referred in the reports --

MR. ROTHFELD: In the remittance reports.

JUDGE LEFF: In the remittance reports were made.

MR. ROTHFELD: So stipulated.

MR. PORTNOY: So stipulated.

Q Mr. Gessin, were there dues deducted from the wages of the employees?

A Yes, there were.

Q I show you this document and will you tell me what it is?

A This is a -- is the payroll book for Gessin Electrical Contractors for 1974.

Q Does it reflect, are there any records -- how is

that book kept?

Who keeps it?

A My bookkeeper.

Q Is it kept in the regular course of business?

A Yes, it is.

Q Does it contain any records or notations concerning the payment of check off of dues from employees?

A Yes, it does.

Q How is this book kept in terms of the notation of the employee's names?

A In this particular book it is kept in the upper left hand corner of the page.

Q Now, we have this book open to an employee by the name of Casper Wheeler.

Does this book reflect any union dues deducted from his wages?

A Yes, it does.

Q Would you indicate on where and on what days this book indicates union dues deductions from Mr. Wheeler's wages?

A Sure, it indicates it at 3/15, 5/10, 5/10, 3/1, 1/15 and the rest is continued in the back.

MR. PORTNOY: I move the payroll book for 1974 in evidence.

MR. ROTHFELD: Respondent will stipulate that

the employer dedecuted dues for certain employees and did not deduct dues for other employees.

THE WITNESS: He was not employed at this time.

JUDGE LEFF: Will the Respondent stipulate that at all times material herein the employer Gessin deducted dues which were remitted to the union for all employees who were within the bargaining unit?

MR. ROTHFELD: From my examination of this book this is not correct, Your Honor, therefore, I cannot so stipulate.

JUDGE LEFF: That is what the stipulation would have to be.

Do you accept the stipulation?

MR. PORTNOY: Sure.

MR. ROTHFELD: Your Honor, I am now looking at the Jeramie Jones page.

I see no reference to union dues.

Lawrence Lee page, no reference to union dues, and Kenny Perkins, union dues, Dennis Ferguson, no union dues, Orlando Moray, no union dues.

JUDGE LEFF: All these people within the unit?

THE WITNESS: Yes, they were.

JUDGE LEFF: Or within the bargaining unit?

How do you explain dues were not deducted?

THE WITNESS: On a few employees they were short-

term employees.

A few elected to pay their union dues directly to the union.

MR. ROTHFELD: I see here Norman Chernoff whom I made some notes of previously, no reference to union dues deducted on his behalf even though he was for some months the only employee for whom contributions to the pension fund was made, so I cannot stipulate.

JUDGE LEFF: Did you get check offs from some of these employees?

THE WITNESS: Pardon?

JUDGE LEFF: Did you get check off agreements?

THE WITNESS: A few of the employees paid their dues directly, a few we paid for them and a few were deducted directly from their pay.

JUDGE LEFF: Well, those that you paid for, was it deducted from their pay?

THE WITNESS: Not in all cases.

JUDGE LEFF: Some you paid their dues without deducting it from their pay?

THE WITNESS: Yes.

MR. ROTHFELD: That is another unfair labor practice, Your Honor, but with a different Respondent prospectively.

I think the 10B unfortunately covers that.

JUDGE LEFF: Probably.

MR. PORTNOY: What can we stipulate to with reference to this book?

JUDGE LEFF: I don't know where we are now.

What are you stipulating with reference to this book?

MR. ROTHFELD: I can only stipulate that in the case of one or two of the witness' employees, payments were made to the Teamsters Union of union dues.

JUDGE LEFF: Just one or two; is that right?

THE WITNESS: No, a few.

MR. PORTNOY: It is not indicated.

JUDGE LEFF: Is that as far as you want to go with the stipulation?

MR. PORTNOY: No, no, in this book, let me put it in terms of an offer of proof, Your Honor.

We offer to prove that dues were deducted from the wages of Lawrence Murnen and paid to Local 363.

Dues were deducted from the wages of Casper Wheeler and paid to Local 363 during 1974.

Dues were deducted from the wages of Al Perkins and paid to Local 363 in 1974, and dues were deducted from the wages of Kenny Perkins during 1974 and paid to Local 363.

Dues were deducted here for Larry Murnen again.

JUDGE LEFF: In '74?

MR. PORTNOY: In '74.

MR. ROTHFELD: No Norman Chernoff.

Oh, Mark Gessin.

Who is Mark?

THE WITNESS: My brother.

MR. ROTHFELD: Your brother?

THE WITNESS: Yes.

MR. PORTNOY: Dues were deducted from Lawrence Murnen and paid to Local 363.

MR. ROTHFELD: In '75.

JUDGE LEFF: Is that 1975?

THE WITNESS: '74.

MR. PORTNOY: This is 1974.

JUDGE LEFF: Now, is it true, Mr. Gessin --

MR. PORTNOY: I put that in terms of an offer of proof and I will offer to stipulate.

JUDGE LEFF: You offer is no good unless we get a stipulation.

MR. PORTNOY: I will offer to stipulate to that fact in lieu of putting the '74 payroll book in.

JUDGE LEFF: Will you stipulate?

MR. ROTHFELD: I will so stipulate if the General Counsel will also stipulate that the payroll books reflect that in the case of other employees no union

dues was sent to the Teamsters during the same period.

JUDGE LEFF: Will you so stipulate?

MR. ROTHFELD: Sure.

JUDGE LEFF: All right, the stipulation is approved.

Now, Mr. Gessin, am I correct in understanding that in the case of other employees, those employees paid, your understanding is they paid dues directly to the union?

THE WITNESS: Yes, they did.

JUDGE LEFF: Without deduction?

THE WITNESS: Yes.

JUDGE LEFF: Do I also understand from what you told me before that in the case of still other employees the company, your company, paid their union dues without deducting such dues from the wages of those employees?

THE WITNESS: Yes, that is correct.

Q (By Mr. Portnoy) How many employees did you pay union dues on behalf of in 1975?

A I have to look in the book.

I would have to have a -- to have the checks.

Just two.

Q Just two?

A Yes.

Q How many employees in the unit, total?

JUDGE LEFF: Didn't vary from time to time?

THE WITNESS: I can tell from this.

Q (By Mr. Portnoy) It would be reflected in the remittance reports in General Counsel's Exhibit 4 in each case for each month?

A Right, they would reflect how many.

MR. ROTHFELD: Objection as to leading.

MR. PORTNOY: I withdraw the question.

JUDGE LEFF: You are withdrawing what?

MR. PORTNOY: The question of how many employees were in the unit.

MR. ROTHFELD: If Your Honor please, we do not concede and made it clear that we did not concede that remittances were sent to the Funds on behalf of all employees in the unit.

JUDGE LEFF: The witness so testified.

I know you don't concede it.

The objection you just made is overruled.

MR. PORTNOY: Then I will permit the question to stand.

Q (By Mr. Portnoy) How many employees were in the unit overall in 1974?

A You are saying for the entire year or the average?

Q The entire year?

JUDGE LEFF: How do you determine that?

It varies from day to day.

THE WITNESS: I can tell from the book the number of employees I have for the total year.

JUDGE LEFF: How many men worked during the whole year?

THE WITNESS: On and off.

JUDGE LEFF: Where is that material to the case?

MR. PORTNOY: It may play some part in your thinking about Mr. Rothfeld's possible contention as to whether or not it would effectuate the purposes of the Act in issuing an order herein.

Frankly, I don't think it does.

JUDGE LEFF: I don't even know what his contention is.

MR. PORTNOY: Neither do I.

JUDGE LEFF: He's keeping it a closely guarded secret.

MR. PORTNOY: I think he ought to supply you with the facts.

JUDGE LEFF: I will be here.

If he comes up with something with respect to which I may think is relevant I will let you recall the witness.

Right now I don't see any relevancy.

MR. PORTNOY: At this point I have a 1975 payroll book and I am perfectly willing to enter into the same

stipulations with respect to the payment of union dues for employees in 1975 at various times.

JUDGE LEFF: The last stipulation was limited to '74?

MR. PORTNOY: Yes.

Your Honor, I offer to stipulate that during 1975 --

JUDGE LEFF: The stipulation is that during 1975 deductions for union dues were made from the wages of the following employees ==

MR. PORTNOY: Lawrence Murnen, Casper Wheeler, Al Perkins, Kinney Perkins.

JUDGE LEFF: Do you so stipulate, Mr. Rothfeld?

MR. ROTHFELD: So stipulate.

JUDGE LEFF: I think that is enough.

Anything else from this witness?

MR. PORTNOY: Yes.

Q (By Mr. Portnoy) Do you know Walter Ineson?

A Yes, I do.

JUDGE LEFF: Are you starting a new thing?

I think we better recess for lunch.

It is 1:30 and time enough.

MR. ROTHFELD: If Your Honor please, I would appreciate as short a lunch so we can ==

JUDGE LEFF: We will recess until 2:15.

(Whereupon, and at 1:30 o'clock P.M., a luncheon recess was taken until 2:15 o'clock P.M.)

AFTERNOON SESSION

JUDGE LEFF: The hearing will come to order.

Whereupon,

HARVEY GESSIN

resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continuing)

Q (By Mr. Portnoy) Mr. Gessin, do you know Walter Ineson?

A Yes, I do.

JUDGE LEFF: Know who?

MR.PORTNOY: Walter Ineson, I-n-e-s-o-n.

Q Who is Mr. Ineson?

A He is the business agent for the Bronx for Local 3.

Q Did you ever have a conversation with Mr. Ineson concerning Local 3?

A Yes, I did.

Q What was the date of that conversation?

A It was late spring, early summer.

June, somewhere around there, July.

Q WHat year?

A '75.

Q Where did that conversation take place?

A At Joe and Joe's Restaurant on Bruckner Boulevard

in the Bronx.

Q Who was present at that conversation?

A Myself, Walter Ineson and Melvin Gessin.

Q Who is Melvin Gessin?

A He is my father and the president of Gessin Electric.

Q How did this conversation come about?

A Walter contacted my office and he said he would like to sit down with me and explain the operations and functions of Local 3.

Q What did you say to him when he contacted your office?

First of all, was it you who spoke to Mr. Ineson when he contacted your office?

A The second time he called I spoke to him.

Q This second time that he called, what did Mr. Ineson say to you and what did you say to him?

A We discussed general trade conditions and he said that he'd like to sit down and explain his union to me and we set up an appointment to have lunch together.

Q You say, "we discussed general trade conditions."

Could you be more specific about your conversation?

A There was -- it was a very vague conversation.

It didn't get into any great detail.

Q What did he say to you and what did you aay to him?

A Well, he said that he would like to explain what Local 3 can do for me in the trade, how it could help benefit my position in the trades.

Q And you and your father and Mr. Ineson then met in Joe and Joe's Restaurant?

A Right.

Q WHat was the conversation there?

What did Mr. Ineson say to you and what did you say to him and what did your father say, if anything?

A Well, his main objective I think was == his main objection ==

Q Never mind his main objective.

Just answer my question.

What did he say to you and what did you say to him and what did your father say, if anything?

A Well, he said he'd like me to join Local 3 immediately.

Q Continue.

Give us the rest of the conversation.

A He said he would like our people to resign from 363, that he would like us to enter into a contract with Local 3.

Q Did he say anything about how the resignation of your people was supposed to be accomplished?

A He said that he would, with my permission, he would set up an appointment with all my people and sit

down with them and he would organize the whole thing.

Q What did you and your father say to Mr. Ineson if anything when he ==

A We didn't indicate one way or the other. We said we'd speak to him in the future.

Q And did you ever talk to Mr. Ineson after that?

A Yes, he contacted us again.

Q When was that?

A Shortly after, a few weeks, a week, two weeks, three weeks, I'm really not sure.

Q When you say that he contacted you did he call you or speak to you in person?

A He called me.

Q WHat did he say to you and what did you say to him?

A I said to him that I really can't do anything at the present time, I'm tied to a 363 contract that I will keep it in mind.

Q Did he say anything?

A He tried to convince me that I'm not tied to my 363 contract and that it can be broken at any time.

Q When you say he tried to convince you, what did he say?

A He said that with my men's resignation I would be free of my 363 obligations.

Q Was there anything else said that you recall?

A No.

Q Did Mr. Ineson or any other representative of Local 3 speak to you after that?

A Yes.

Q When was that?

A I met -- I spoke with Mr. Ineson a few times during the picketing and he said that he had no knowledge of authorization of any picketing, he doesn't even know how the people were there, which I can't understand, considering that he is the representative for the Bronx.

Q So the next thing that happened in the course of events involving Local 3 was the picketing?

A Right.

Q When did you learn about the picketing?

A When?

When I went to my job site at 1712 Longfellow Avenue.

Q What day was that, approximately?

A Early October, '75.

Q Can you be more specific as to the date?

A Exactly, no, no.

I know it was near the beginning of October.

Q The last week on -- last week in September, first week in October, second week in October, third week

in October?

A I'm not positive.

Q Pardon?

A I'm not positive.

Q You're not positive as to any of the possiblities that I mentioned?

A I know, I believe it was the first week in October, but I know that it had to be after the 25th of September.

I know that because I have records up to the 25th of September.

Q You mentioned something about going to the job site at 1712 Longfellow Avenue?

A Right.

Q Would you describe for us what work you were performing, your company was performing on that job, briefly?

A We were wiring the entire building at 1712 Longfellow Avenue.

Q What type of construction job was this?

A It was an apartment house building.

Q New construction or an alteration?

A An alteration.

Q Who was the general contractor?

A Graphic Building Systems.

Q Is that the same company that was here this

morning pursuant to my subpoena?

A Yes.

Q Will you tell us what happened when you came to the job site?

A I noticed that there were Local 3 pickets marching up and down in front of the building attempting to convince other tradesmen, people of my electrical trade and truckers not to work on the site.

MR. ROTHFELD: I move to strike.

Q Did you see what they said?

JUDGE LEFF: Motion granted.

Q You saw the Local 3 pickets there, you say?

A Yes.

Q What was on the picket signs?

A It said employees of Gession Electric join Local 3 for better wages and benefits, and then it had Local 3's phone number and address.

Q How many pickets were there?

A How many people?

Q Yes,how many people were picketing?

A Well, first it started out --

Q No, that day?

A That day there was four or so, three, four, five.

Q Where were they picketing?

A On Longfellow Avenue and 174th Street.

Q Did you hear any conversations between these pickets, the people who were picketing and anyone else?

A Not really, no.

Q Did you ever see the pickets after that?

A Yes, they increased their size daily to somewhere -- I don't know -- from what I was told there were close to 100 people at that site.

MR. ROTHFELD: I object to what the witness --

JUDGE LEFF: I will strike it.

I mean I will strike the testimony concerning what he was told.

THE WITNESS: Well, I personally saw ==

JUDGE LEFF: There is no question before you now.

Q (By Mr. Portnoy) You described the picketing the first day?

A Right.

Q Back to the first day, how long did you remain on the job yourself?

A I never stay there one complete day.

I was only there portions of days.

Q This first day how long did you observe picketing?

A About two hours.

Q Did you see the picketing yourself thereafter?

A Yes, I did.

Q Will you give us the dates so far as you can remember that you saw the pickets picketing at 1712 Longfellow Avenue?

A It was in October.

I don't recall the dates.

Q How many days did you see them, separate days did you see these pickets from Local 3 picketing?

A I personally saw them seven or eight times.

I also personally on film recorded them twice, two different occasions.

Q These seven or eight times, over what period of time did it stretch?

In other words,what date was the eighth time?

A I would say before the end of October.

Q Sometime before the end of October?

A Yes.

Q Did you see the pickets at all in November?

A I believe that they were there in November.

Not as much.

It wasn't a constant thing.

It was one or two days a week.

Q Did you see them yourself or was this reported to you?

A No, I have seen them.

Q HOw many times in November, 1975, did you see the pickets?

A I don't know think I saw them more than twice in November.

MR. PORTNOY: That is all I have for this witness.

CROSS EXAMINATION

Q (By Mr. Rothfeld) Mr. Gessin, do you keep a diary of your important business appointments or business activities?

A Not an official diary,

I mark a few items on my calendar.

Q About how long do you keep your calendar?

A It depends.

If I feel there is something important I retain, if not I get rid of the calendar but I learned something from this incident with Local 3, that I now no longer throw away any calendars so I will have complete recollection of all the information that I would need.

Q Did you keep a calendar in 1974?

A No, not at all.

Q Not at all?

A No.

Q When did you first begin to keep your calendar?

A 1972.

I carried a bound book with me which I marked all of the various -- my various activities, and in 1974 I very rarely carried it.

As a matter of fact, I don't think I carried it at all in '74.

Q Excuse me, do I understand your testimony that you carried this calendar in 1972 but not in 1974?

A '72 I carried it full time.

In '73 I starting phasing it out because I was not using the information I was retaining, and in '74 I practically didn't carry it at all.

Q Then am I correct, sir, that during '74 you made no record of you having signed any contracts?

A Could you repeat the question?

Q During 1974 did you make any written note of whether or not you signed any contracts?

A MR. PORTNOY: Objection to relevance.

JUDGE LEFF: Overruled.

Q (By Mr. Rothfeld) Answer, please?

A My record would be on the contract, the contract is dated ==

Q Then, sir, do I understand that you made no note in any calendar or diary or any document other than the contract itself which is General Counsel's Exhibit 3, that the date that you signed this document was the date set forth on this exhibit?

A Could you repeat that question again?

MR. ROTHFELD: Read it back.

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(Record read.)

MR. PORTNOY: I object as to relevance and immateriality.

JUDGE LEFF: Overruled.

Q (By Mr. Rothfeld) Answer it.

JUDGE LEFF: Answer it.

A I could check that further when I go back to the office, but to the best of my knowledge I most likely don't have a record of it.

The reason I was keeping the record book in '72, in '73, was because I was mostly out of my office.

In '74 and almost all of '75 I was in my office almost 100 percent of the time.

Q Did you type this date on General Counsel's Exhibit 3 and if not, do you know who did?

A It was done by the secretaries at 363.

Q At the Teamster's office?

A Yes.

Q Did you see this date being typed by the secretary of the Teamster's?

A I saw the form and then I saw the completed form.

I did not see it typed.

I heard the typewriter but I did not see it typed.

Q Is it your testimony that this document was made

to order for you, sir?

A Not the document.

It was a blank document, and they inserted proper dates.

Q How do you know the date that they inserted was the proper date?

A Because I was there.

Q You watched the secretary type?

A No, I read it when she brought it back to me, before I signed it.

Q You just said -- just stated that you can go to your office and check whether you have any office record of the date you signed this document.

Is it your testimony that up until today you have not checked your office records to determine?

A There was no reason to.

Q You testified that Walter Ineson told you to join Local 3 immediately.

Do you recall that testimony?

A Yes.

Q Did he use the word, "immediately"?

A Would you repeat that question, please, the whole question?

Q Did Walter Ineson use the word, "immediately"?

A He said he could - he can organize it immediately.

Q He said that he could organize the shop immediately?

A Right, but he said there was no need to wait until my existing contract expired.

Q Did he ask you to sign the contract immediately?

A He asked me to sign a contract after he had my == all of my men resign and installed into Local 3.

Q Mr. Gessin, last summer did you visit Mr. Ineson at the Local Union Number 3?

A No, I visited him in the fall.

Q You visited Walter Ineson in the fall?

A Right.

Q Where did you visit him?

A In Local 3.

Q Is that on Jewel Avenue in the Local 3 building in Flushing?

A That's right.

Q Is that on the 4th floor?

A I'm not sure.

It was above the first floor.

Q Was this an appointment made by you?

A Yes, to try to end the picketing and vandalism on Longfellow Avenue, to buy time until the courts ruled in my favor.

Q Is it your testimony that you did not visit Mr. Ineson last summer?

A That's right, I did not.
It was in the fall.
Q Do you remember the date?
A It was probably October.
Q Probably October?
A Yes.
Q During 1975, did you keep a calendar or diary of your important visits and interviews and appointments?
A Starting, I think I have -- I think -- October, November -- no, September, October, November I have.
Q Do you have it with you?
A No, I don't.
Q Back in your office?
A Yes.
Q Your testimony then is that during 1974 and during all of 1975 until last September you kept no diary of your appointments and business, important business matters?
A I don't think there is anything, no.
Q Pardon?
A Like I said, the reason I started to reinstate it was because of all the problems Local 3 was causing me.
Q But you did not reinstate it at the time that you went to visit Mr. Ineson, or did you?

A No, I should have a record of that.

Q But not with you?

A No.

Q Did Mr. Ineson say anything to you about your lawyer contacting a lawyer for Local 3?

A Yes.

Q Did Mr. Ineson say to you that you should sign an agreement before your lawyer contacted a lawyer for Local 3?

MR. PORTNOY: Objection.

Q (Continuing) Or after?

JUDGE LEFF: Overruled.

THE WITNESS: Could you repeat the question?

MR. ROTHFELD: Read it back, please.

(Record read.)

A I would say before.

Q You are sure about that?

A I'm recalling my meeting with him at Joe & Joe's Restaurant.

Q Sir, did Mr. Ineson say to you what the purpose of your lawyer's contacting a lawyer for Local 3 would be?

A Could you repeat that question again?

(Record read.)

A I don't recall.

Q Did you ask Mr. Ineson what the purpose of your lawyer contacting a lawyer for Local 3 would be?

A You just asked that question.

Q No, I didn't.

A Well, you better repeat it again.

Q I will repeat it again:

Did you ask Mr. Ineson what the purpose of your lawyer's contacting a lawyer for Local 3 would be?

A I don't recall.

Q You don't recall whether you asked him that question?

A No.

Q When Mr. Ineson suggested to you that you have lawyer call a lawyer for Local 3, did you say anything, if you remember?

A I don't believe Mr. Ineson ever asked me to have my lawyer call -- my lawyer contact their lawyers or you yourself.

I believe I asked my attorney to be present with me.

Q Is it now your testimony that you ==

MR. PORTNOY: I object to the form of the question.

MR. ROTHFELD: I think it is proper cross, Your Honor.

JUDGE LEFF: You may ask.

Q (By Mr. Rothfeld) Is it now your testimony that Mr. Ineson did not suggest to you that your lawyer call his lawyer?

MR. PORTNOY: I object.

There was no contrary testimony.

JUDGE LEFF: As I understand the prior testimony the witness said that Ineson suggested to him that he contact Local 3 and, I don't recall, did Ineson ever ask you to ask your lawyer to contact the attorney for Local 3?

THE WITNESS: I don't recall him ever saying that.

JUDGE LEFF: Did he ask you to personally contact a lawyer for Local 3?

THE WITNESS: Yes.

JUDGE LEFF: That is according to my recollection.

MR. ROTHFELD: Nothing further.

JUDGE LEFF: Do you have any further questions, Mr. Portnoy?

MR. PORTNOY: Not now.

JUDGE LEFF: Thank you.

(Witness excused.)

JUDGE LEFF: Next witness.

MR. PORTNOY: Your Honor, I had subpoenaed a witness from Local 363, the gentleman whose name appears on General Counsel's Exhibit 3, Mr. Canizzio.

While we were out to lunch I received a message, telephone message to me from Jordan Canizzio that said that Mr. Canizzio is home ill and wasn't able to keep his appointment today.

In view of this and in view of Mr Gessin's testimony this morning with respect to General Counsel's Exhibit 3, I don't see any purpose in asking for an adjournment of this case in order to enforce the subpoena for Mr. Canizzio at this point.

General Counsel will therefore be willing to rest its case at this point, subject to calling Mr. Canizzio as a rebuttal witness in the event that something is raised by Mr. Rothfeld in his defense that would require Mr. Canizzio to testify.

With that statement, General Counsel rests his case, his direct case.

JUDGE LEFF: You don't have any commitment from me that you will be granted that adjournment so I don't have to pass on that now.

I mean, of course, the testimony about the signing of the contract is uncontradicted and you don't need the other witness; is that right?

MR. PORTNOY: Correct.

JUDGE LEFF: If it is correct then I will see when you make your application at the end of the case

whether I will grant you a postponement to enforce the subpoena.

Go ahead.

MR. ROTHFELD: Your Honor, I call myself as a witness.

Whereupon,

NORMAN ROTHFELD

having been sworn by the Judge, was examined and testified as follows:

JUDGE LEFF: State your full name and address, please?

THE WITNESS: Norman Rothfeld.

JUDGE LEFF: Your address, Mr. Rothfeld?

THE WITNESS: Of Menagh, Trainor and Rothfeld, 130 East 40th Street, New York City.

DIRECT EXAMINATION

Q (BY Mr. Harms) Mr. Rothfeld, when was the first time you saw General Counsel's Exhibit Number 2?

A October 16, 1975 at about 2 P.M.

Q Would you go into the circumstances surrouding your first exposure to this document?

A Prior to ==

JUDGE LEFF: What was the date?

THE WITNESS: 16th.

JUDGE LEFF: 19 --

THE WITNESS: -- '75.

A (Continuing) Prior to October 8th, 1975, I

received a telephone call from Howard Wendy.

The gentleman announced himself as an attorney for Mr. Gessin.

He told me that there were calls to him that he call the office in which I am located to speak to me and sit down with me.

I made an appointment for him to come see me October 8th at 3 P.M.

He came to see me.

Mr. Wendy told me that Gessin was seriously considering entering into a contract with Local Union Number 3 but there were two drawbacks.

One was union problems that the contract might raise and the other was what he thought might be a legal problem, namely, an alleged existing agreement with Teamsters Local 363.

I asked Mr. Gessin when the agreement expired and he said he didn't know.

I told Mr. Gessin he would have to produce the agreement before I could authorize Mr. Ineson to sit down with Mr. Gessin.

I also asked Mr. Wendy how many members of Local 363 Mr. Gessin was checking off dues for.

He said he did not know.

I also asked Mr. Wendy how many employees, if any,

Mr. Gessin was sending contributions to the Teamster Funds and he said he did not know.

I told Mr. Wendy I would want the answers to all these questions.

I also said to Mr. Wendy that assuming there was no contract bar or when there would be no contract bar, that if Mr. Ineson succeeded in orgainzing the majority of the employees and those employees were willing to and did resign from the Teamsters, if they were members, and if and when Mr. Ineson had available designation cards either to exhibit to Mr. Gessin or to a neutral party, then and only then would I authorize negotiations leading to an agreement.

At about that point Mr. Wendy left.

Shortly before October 16th, Mr. Wendy called and insisted on an appointment in our office including Mr. Wendy, Mr. Gessin, Mr. Ineson and myself, and after Mr. Wendy so insisted I made time on October 16th, at 2 P.M., except I told Mr. Wendy that since I had not seen the contract, I would under no circumstances agree to sit down with Mr. Gessin, but I would see Mr. Wendy and I would have Mr. Ineson present.

Mr. Wendy came alone and I had Mr. Ineson there.

Mr. Wendy then exhibited to me a copy of General Counsel's Exhibit 2 of which we forthwith made

a Xerox and I have in my possession.

Mr. Wendy then turned to Article 28 on page 15 of that document entitled, "Expiration."

Mr. Wendy said to me that that document, that article appeared to contain and consisted of an automatic renewal clause and said to me that this automatic renewal clause appeared to bar a further contract and he asked me if I, having some more knowledge of these documents than he, agreed with him.

I first asked Mr. Wendy whether the wage range which Gessin was being paid was the same wage range as that set forth in General Counsel Exhibit 2.

Mr. Wendy said he did not know.

Mr. Wendy also did not supply me with the information which I had requested with respect to union membership, deduction for dues or payment into the Teamster Funds.

Mr. Wendy and I read this contract together out loud.

I said to Mr. Wendy, "I do not believe that this automatic renewal clause entitles Mr. Gessin to remain under contract forever."

I distinctly remember saying that even marriage is forever these days necessarily,and I stated to Mr. Gessin in my belief with this automatic renewal clause,

there would not be a bar in a representation proceeding to an election, but not knowing all the facts upon which Mr. Gessin was operating I did not know.

I also stated to Mr. Wendy that in my opinion Gessin's employees could resign and Gessin could, upon showing of a proper majority, sign with Local Number 3, and I offered to have Mr. Wendy read in the library several Labor Board cases, the library being our library and one that I particularly mentioned --

MR. PORTNOY: Would the record note at this point Mr. Rothfeld is leafing through some documents from his file.

A (Continuing) I made reference to Atlas Electric Service,Company, 176 NLRB Number 110.

Mr. Wendy then said that ==

JUDGE LEFF: What did you show him?

THE WITNESS: I did not show him.

Mr. Wendy did not take up my offer.

I also said to Mr. Wendy that in no instance where any employer had == where any employees of employers had left the Teamsters and thereupon the employer signed an agreement with Local Number 3 nave there been any losses to the employer as a result of any threatened litigation by the Teamsters

I told Mr. Wendy while I could give no assurances,

I would not give Mr. Wendy a written indemnification which he asked for in the event that this could occur, I told him that to my knowledge this had never occurred and I saw no reason why his should be the first instance.

Mr. Wendy then told me that the main barrier between Gessin signing an agreement with Local 3 was not the agreement with the Teamsters but, rather, other matters relating to the collective bargaining relationship.

Mr. Wendy asked me for several written letters of agreement or side agreements or editions to the master agreement of the Electrical Contractors Association.

I told Mr. Wendy that under no circumstances would Local 3 agree to anything, to any clause which would vary from the document which covered some 400 electrical contractors in their agreement with Local 3.

I wasn't going to get involved in an anti-trust situation on the account of or possibly anti-trust situation on account of Gessin Electric.

JUDGE LEFF: How would you have an anti-trust situation if you saw in the contract that the others signed -

THE WITNESS: Well, thinking of Jewel Tea Company but I didn't discuss that with Mr. Wendy.

With respect to any guarantees that Mr. Wendy wished that did not contradict the terms of the existing

agreement, I told him that if was a question of reliance upon good faith of the business representatives of Local 3, including Mr. Ineson, I did not involve myself in that -- I do not do any negotiations and that would have to be a matter between Mr. Ineson and Mr. Gessin or Mr. Ineson and Mr. Wendy.

Mr. Wendy then asked me to give him a copy of the current agreement of Local Union Number 3 with the Contractors Association.

I told him that I had only one copy which had not yet been printed which he could sit down and read in a library, consisting of some 30 pages.

Mr. Wendy declined that invitation and he left with Mr. Ineson.

Several days later I got a call from Mr. Wendy saying that there was picketing at Mr. Gessin's premises and he wanted to know whether or not he should apply for an injunction to the New York State Supreme Court or to the National Labor Relations Board.

I told Mr. Gessin --rather, Mr. Wendy, that if he believed that Gessin was not in interstate commerce he should apply to the New York State Supreme Court.

If he believed Gessin was in Interstate commerce he should apply to the Labor Board and I gave him the addresses of both buildings.

JUDGE LEFF: Do you make it a practice to advise employers whom the union is picketing what legal recourse they should have and where that recourse should be taken?

THE WITNESS: I don't find the situation customary, Your Honor.

A (Continuing) I did say to Mr. Wendy, "on what basis do you think that you can have an injunction against the picketing?"

He stated that as he understood it the automatic renewal clause, what is now General Counsel's Exhibit 2, was in effect and made the contract effective.

This was some days after October 16, 1975.

JUDGE LEFF: In other words, what he was relying on would be an open period for the contract?

THE WITNESS: Yes, Your Honor.

Q When was the first time that you saw General Counsel's Exhibit Number 3?

A The first time I saw General Counsel's Exhibit Number 3 was on Friday, November 7, 1975.

Q Would you go into the circumstances surrounding your first time -- your first exposure to this document?

MR. PORTNOY: What was the date?

JUDGE LEFF: November 7, 1975?

A On Monday, November 3, 1975, about 5 P.M., I received a telephone call from Seymour Detsky who

stated that he was the attorney for Gessin Electric.

JUDGE LEFF: They changed attorneys?

THE WITNESS: Apparently there is an association between Mr. Wendy and Mr. Detsky.

I have never seen Mr. Wendy's name on any stationary.

A (Continuing) I believe both -- Mr. Detsky was here this morning and I don't see him here now.

Mr. Wendy is here.

Q Mr. Wendy is here?

A Mr. Detsky asked me why I was not in Supreme Court answering his order to show cause.

He told me that he had served some receptionist at the premises of Local Union Number 3 and that he expected me to be in court.

I told him I was not aware of such service and I doubt such service was valid but I was not going to contest service.

I told him that if he would get me a copy of the papers which he relied upon then I would have answering papers by Friday, November 7th.

Mr. Detsky told me that he thought that was too long, it should be Wednesday, November 5th.

I told him that November 4th was Tuesday, Election Day, and the secretaries were not in and could not type answering papers, but I would agree to November the 7th.

On Tuesday, November the 4th, I came into the office and there was a copy of the papers which Mr. Detsky had prepared and in these papers there was a statement that there was an agreement signed in 1974.

I called Mr. Detsky and I stated to him that undoubtedly his clients had misled him because only a couple of weeks before a gentleman named Mr. Wendy had shown me what appeared to be a contract which had expired in 1973.

I said to Mr. Detsky, "I'm sure you have been misled by your clients. Would you look into the matter??

Mr. Detsky said, "no, he had not seen the document and that he would look into it and if he was mistaken he would send a corrected affidavit to Judge Dollinger."

I heard nothing from Mr. Detsky thereafter, but on Friday, November 7th, Mr. Detsky presented what is now General Counsel Exhibit 3 to Mr. Dollinger and gave a copy to Mr. Harms here who brought it back to the office.

Those are the circumstances surrounding my hearing about and seeing General Counsel Exhibit 3. That is all.

MR. HARMS: No further questions.

JUDGE LEFF: We will take a five minute recess.

(Short recess taken.)

JUDGE LEFF: ON the record.

The hearing will come to order.

CROSS EXAMINATION

Q (By Mr. Portnoy) Mr. Rothfeld, did you make any verbatim notes or close to verbatim notes of your conversations with Mr. Wendy or Mr. Detsky?

A I did not.

However, I took care to remember their remarks because I envisioned possible litigation and Mr. Wendy did say to me on October 8th although in a jesting manner, that he was carrying a tape recorder inside his waistcoat.

MR. PORTNOY: I move to strike everything after no as unresponsive, Your Honor.

JUDGE LEFF: Granted.

Q When you testified, Mr. Rothfeld, you were reading from little scratch notes that you made from time to time.

May I ==

A I show you the scratch note.

Q And this little thing says on it Wendy alone 10/8 3 P.M., and, "Wendy and Ineson 10/16 2 P.M."

These were whose handwriting?

A My handwriting.

Q And in the blue whose handwriting is that?

A My handwriting.

Q Is LE27110 --

A Another matter.

Q Another matter, Local 1 and 2?

A Local 1 and 2, is Local 1-2 of the Utility Workers Union which represents the 18,000 employees of Consolidated Edison Company which Donald Menagh represents.

Q And these notes were intended, were made for the purpose of the recording of your appointment dates; is that correct?

A No, sir, my diary records the appointments and I, looking at my diary wrote down these two lines on this scrap of paper.

Q When did you do that?

A Some weeks ago.

Q During your conversation with Mr. Wendy did Mr. Wendy refer at all to the --to his qual == his experience in labor law?

A Mr. Wendy referred to his lack of experience in labor law.

Q So that he told you that he was not experienced as to labor law matters; is that correct?

A That is what I said, sir.

Q It was on October 16th, 1975, according to your testimony, that Mr. Wendy showed you General Counsel Exhibit 2; is that correct?

A That is correct, sir.

He showed it to me and gave it to me to make a Xerox copy of.

Q Now, you had a discussion about General Counsel Exhibit 2; is that correct?

A We had a discussion particularly about the automatic renewal clause.

Q When he showed you General Counsel Exhibit 2, did you ask him if there was any other agreement in effect?

A I don't believe so because Mr. Wendy made quite clear to me that this was the document which he had.

He in no way suggested that any other document of agreement existed, and the conversation about the automatic renewal clause reenforced that position.

MR. PORTNOY: I move to strike everything after no.

JUDGE LEFF: Yes, just answer the questions.

I grant that motion.

Q Now, on November the 7th, Mr. Seymour Detsky presented General Counsel Exhibit 4 to Mr. Justice Dollinger.

Was that your testimony on direct examination?

A So I understand, I was not in court.

Q Who was in court?

A Brian Harms who asked me the questions on direct and another attorney.

Q So that you didn't see General Counsel Exhibit 4 on November the 7th, is that correct?

A General Counsel Exhibit 3.

Q 3?

A I believe I did at the end of the day when Mr. Harms returned to the office.

Q I see, he had been in court?

A That afternoon.

Q Do you know whether any testimony was taken at the court proceedings before Mr. Joseph Dollinger?

A There was no testimony and there was no hearing, and in accordance with Supreme Court practice I doubt that the argument was recorded, or whatever argument there may have been.

MR. MORTNOY: That is all I have of this witness.

JUDGE LEFF: I don't know whether I am asking this of you as a lawyer or as a witness, but what difference does it make, legal effect, whether there was a separate agreement or not?

If there was a separate agreement there was a bar.

If there was no separate agreement there was

automatic renewal and it would be a bar anyway, wouldn't it?

MR. ROTHFELD: Your Honor, whether that automatic renewal constituted a bar I think would depend on whether the existing agreement was continued in enforcement or not, among other things.

JUDGE LEFF: Assuming there was no separate agreement, this contract which was the 1973 contract had an expiration date of November 14th, and provided that it was to be automatically renewed unless notice was given within no more than 90 days or less than 60 days before the expiration.

In other words, notice has to be given at a minimum prior to approximately September 14th.

Your meeting was on October == sometime in October.

THE WITNESS: Yes, Your Honor.

JUDGE LEFF: Even if this were the contract and there were no separate extension agreement that old contract would have automatically renewed and you couldn't picket in any event.

THE WITNESS: If Your Honor please, this meeting was in 1975, two years after the expiration of that prior agreement, firstly.

Secondly, I do not know what notices were or were not given.

Really, in answer to my question to Mr. Wendy as to whether the wage rates and other terms and conditions of the expired agreement were still being adhered to, he said he did not know.

There is no reason to believe that two years later the expired agreements, wages and terms and conditions continue to be adhered to.

I did make reference to the fact that an agreement is a bar and a representation case only for the first three years.

I did not know how that would be applied in the instant case and if a representation case ==

JUDGE LEFF: You are familiar with labor law.

If you have an agreement for three years and if there's automatic renewal from year to year after the expiration of three years each renewal is a separate bar, isn't it?

THE WITNESS: Well, Your Honor, there is an issue of fact in each instance as to whether the agreement did in fact renew, whether notice was given, whether the terms and conditions of the existing agreement were adhered to or whether they were changed or whether there was some change.

I don't know the facts here.

JUDGE LEFF: What did you try to find out about it?

MR. ROTHFELD: I did as I testified on direct ask Mr. Wendy whether or not the terms and conditions of the agreement as set forth in General Counsel's Exhibit 2 continue to operate.

JUDGE LEFF: He said he didn't know?

MR. ROTHFELD: He said he didn't know.

He didn't know any of the facts.

He didn't know about whether there were members of the union, whether the dues were being collected, whether contributions were being made.

Under all of those circumstances I thought there was sufficient lack of proof that General Counsel Exhibit 2 remained in full force an effect to justify organizational picketing, at that time.

JUDGE LEFF: Do you have any other questions?

MR. PORTNOY: No.

JUDGE LEFF: Thank you very much.

(Witness excused.)

JUDGE LEFF: Any more witnesses?

MR. ROTHFELD: Respondent rests.

MR. PORTNOY: No rebuttal.

MR. ROTHFELD: May we have closing argument?

JUDGE LEFF: Yes.

MR. PORTNOY: Do you want to lead first, Mr. Rothfeld, I get the first opportunity to speak and also the last unless you want to say something else?

JUDGE LEFF: General Counsel goes first.

MR. PORTNOY: Your Honor, at this point the fact that a contract was entered into by the employer in 1973 is not in dispute.

It contains an automatic renewal clause and was admitted by the Respondent in his answer.

The fact that a contract was entered into by the employer in 1974 is uncontradicted by Mr. Rothfeld directly.

He had no proof that the contract was not executed as of February, 1974.

Nobody who was there or around who --

JUDGE LEFF: Suppose it were a phoney document? How could he get proof from that?

MR. PORTNOY; Well, there are ways and --

MR. ROTHFELD: Are there?

MR. PORTNOY: Yes,there are, and the only one I can think of offhand is a case called Nathan's Famous in which there were a number of documents flipping about in the hearing room and obviously there was proof.

But Mr. Rothfeld's proof consist of failure or, as he says, alleged lack of statements by Mr. Wendy as to the existence of the '74 contract.

Mr. Wendy said he didn't know there was anything

else.

He was told about -- he was talking about a '73 contract.

As you suggested in your questions to Mr. Rothfeld it wouldn't have made any difference if there was an '73 or a '74 contract.

Either document would be in effect.

The fact of the matter is there is an '74 contract.

Mr. Rothfeld then is attempting to cast, because he did not really put Mr. Wendy to the test and say, "hey, get your client in here, let's get the files in here, let's get it out in the open."

Mr. Rothfeld is saying that it doesn't exist.

This is a supposition upon a supposition.

I recognize that Mr. Wendy's testimony is not hearsay ==

JUDGE LEFF: Mr. Wendy didn't testify.

MR. PORTNOY: No, but I understand Mr. Rothfeld ==

JUDGE LEFF: Since Mr. Wendy is sitting here and he did not testify I have no reason to discredit Mr. Rothfeld in any respect, have I?

MR. PORTNOY: No, and I'm not suggesting for a minute Mr. Rothfeld be discredited in any respect.

However, Mr. Rothfeld, as a legal matter, Mr. Rothfeld's proof is not proof that it doesn't mean that there was no '74 contract.

He never attempted or never really followed through with Mr. Wendy and his client to get all of the facts concerning the contract, and in any event, it would not have made any difference, so there was a contract in existence.

The fact that there was picketing is likewise not in dispute.

The fact that there were signs ==

JUDGE LEFF: That is the only question, isn't it, the only issue in the case?

MR. PORTNOY; That is right, the existence of the contract is the only issue in the case, frankly, I don't think, as I said before, that Mr. Rothfeld's proof constitutes proof of a lack of existence of a contract.

I know it is difficult to prove the negative but he is attempting to cast the burden on Mr. Wendy, go and prove that you had a contract, but yet he did not follow the thing through and attempt to actually drawn Mr. Gessin into the picture.

You don't prove the back dating in this form or an alleged back dating in this form.

Now, even more, the proof presented by General Counsel shows that there was an implementation of the contract consistently throughout, through the payment

to Welfare ==

JUDGE LEFF: Let me see that extension.

Do you have it here?

I think it is G.C. 4.

MR. ROTHFELD: 3.

JUDGE LEFF: G.C. 3 and where is the reference that the main agreement is about to expire?

What does that have reference to, the main agreement expired?

MR. PORTNOY: You have a situation where you have Mr. Gessin as an independent employer and an agreement with the Contractor's Association.

JUDGE LEFF: Were they negotiating a new agreement?

MR. PORTNOY: Right.

As Mr. Gessin testified they were negotiating -- there were negotiations concerning a new agreement and Mr. Gessin agreed to abide by whatever terms of a new agreement were.

JUDGE LEFF: All right, I will hear from you.

MR. PORTNOY: I would note at this point, Your Honor, that the proof is undisputed that these agreements were implemented by the payment of dues, the dues were checked off, so that the employees knew about it.

Payments, Welfare Payments were made and if the

employees felt, if any of them felt, those whose dues payments were checked off and deducted from their wages, if they felt there was no agreement they could have themselves challenged the validity of an agreement because money was being taken from their wages and deducted from it.

So therefore, this was no contract kept in the drawer, no secret from the employees.

Under these circumstances General Counsel submits that there is ample proof, not only of the agreement, but of the implementation on the agreement.

JUDGE LEFF: I will hear from you.

MR. ROTHFELD: First, with respect to commerce.

We contend that on the facts there is no interstate commerce as stipulated.

WE further point out that when the picketing was authorized what was known to the union about the commerce of the company was that there had been an election in the New York State Labor Relations Board.

There was no reason for the union to anticipate that there was interstate commerce here.

In fact, the employer did repair first to the Supreme Court in the State of New York on the theory that there was no interstate commerce and was not happy with the results which it obtained there and

took another bite of the apple.

As it happens, although that is not the record, Mr. Portnoy has my memorandum on his desk.

JUDGE LEFF: A good faith mistake and belief that the company would not engage in commerce exonerate you from an unfair labor practice if there was one?

MR. ROTHFELD: I think so, but I'm not relying exclusively on that by any means.

That is the least of the argument, but I may as well present it for what it is worth.

We have a company that is or is not in commerce as it chooses, apparently.

The first question that Your Honor has to decide is whether or not you can find or should find that General Counsel's Exhibit 3 in fact was executed on February 1st, '74.

We have the unexplained illness of the union signatory to this document, Gordon Canizzio who had been subpoenaed.

We have Mr. Gessin's testimony that he kept during all of 1974 and most of 1975 no written calendar, record or any kind of memorandum of the transactions and that the only record of when he signed this document is the document itself.

Mr. Gessin did not remember anything else he did

on the day he signed this document.

He did not remember any of the alleged negotiations which took place or discussions concerning terms and conditions which took place simultaneously with his execution of that document, whenever it was.

He did not remember the day of the week or anything else.

He remembered the date after as are noted on the record any other document, he took it from the document.

Mr. Gessin did testify in response to my question "when did you see this document after it was signed", the next time he saw it must have been, to use his language, sometime in October, 1975.

JUDGE LEFF: WHat is unreasonable about that?

This doesn't contain any specific provisions that he might have occasion to refer to and when you started picketing then it gave him a reason to look for this.

MR. ROTHFELD: Your Honor, in connection with the day-to-day enforcement of a collective bargaining agreement I would think the employer would have occasion to look at whatever agreements existed.

We have a situation where Mr. Wendy on October 16th is given only General Counsel Exhibit 2.

We have a situation where on Tuesday, November

4th, 1975, Mr. Detsky admits on the telephone that he personally had not seen the 1974 contract.

This is on November 4th, 1975, and states that he will investigate, and if the moving affidavit is correct, he will put in his own correct affidavit to Judge Dollinger.

So that on November 4th, Gessin Electric had not apparently leveled with its attorneys,and not until November 7th, 1975, that General Counsel Exhibit 3 present itself.

I think it is reasonable to assume that a client will level with his own attorneys, and present what applicable contracts exist in connection with an injunction application and the injunction papers were prepared several days prior to November 3, 1975, for the New York State Supreme Court.

Getting to another question, Your Honor, wherein you asked that even if General Counsel Exhibit 3 did not exist, would not General Counsel Exhibt 2 continue to operate.

My first answer is, Your Honor, that the facts and the record do not suffice to show that General Counsel Exhibit 2 continued in effect.

There is no testimony ==

JUDGE LEFF: The only way it could continue in effect

is if they entered into the February, 1974 contract.

MR. ROTHFELD: Not exactly, Your Honor.

There may or may not have been annual notices within the 60 to 90 days.

There may have been notices of termination or modification which were not followed up by any subsequent document like General Counsel Exhibit 3.

While there was no doubt were wages being paid and contributions sent into Teamster Funds for some of the people first, we cannot tell whether or not General Counsel Exhibit 2 was being followed in any significant respects as far as amounts of -- amounts are concerned, nor whether General Counsel Exhibit 3 was being followed because General Counsel Exhibit 3 shows no wage rates.

In any case, two years after the expiration date of the contract on the state of this record I don't see the reasonable liklihood of a finding that General Counsel Exhibit 2 remained in effect.

The record just isn't there for it.

Turning to the next question, Your Honor, even assuming that General Counsel Exhibit 2 did remain in effect or that General Counsel Exhibit 3 were signed on February 4th, and did constitute a valid and subsisting collective bargaining agreement and continuation of

relationship with the Teamsters, it does not prove that.

I know that very well from taking several contractors into criminal court and asking for a conviction on the grounds that they fail to pay their fringe benefits.

Although they have not signed contracts I allege the existing relationship and each time the Judge said, "well, counsel, the employer was meeting business competition, wage competition, he wants to keep his people and he chose up to a time to make whatever payments he chose to make and then stopped. That does not prove a contract."

But, Your Honor, assuming either a valid contract on General Counsel Exhibit 2 and valid contract on General Counsel's 3, the question as to whether on the state of the facts available to the union where we have employees of Gessin for whom admittedly dues were not deducted from their pay envelopes, on the state of facts known to the union and to the union's legal staff, the question is whether there was ==

JUDGE LEFF: How did you know?

You didn't know it until today, did you?

How did the union know it?

MR. ROTHFELD: I knew that == I had reason to

believe that General Counsel's Exhibit 2 was the only operative document until --

JUDGE LEFF: That is not what you were talking about.

You were talking about the fact that some of the employees of Gessin didn't have their dues deducted.

MR. ROTHFELD: That was one of my questions as I testified to == that was one of my questions to Mr. Wendy.

Those were my questions to Mr. Wendy relating to enforcement of General Counsel's Exhibit 2, the contract, and even before I saw the contract I specifically asked questions about dues deductions and contributions.

I was never supplied with this information.

We had reason to believe, given the pattern of enforcement with Local 3, that there was not necessarily the contract relationship that there might appear to be.

MR. PORTNOY: Objection, he is referring to facts not in evidence.

JUDGE LEFF: I realize that.

MR. ROTHFELD: In any event, Your Honor, we had a right to assume that the only document was General Counsel's Exhibit 2 at the time the picketing was

authorized.

JUDGE LEFF: But Mr. Wendy, according to you, led you to believe that General Counsel Exhibit 2 was still in force and effect by virtue of the automatic renewal provisions thereof.

MR. ROTHFELD: Mr. Wendy did not lead me to believe so.

Mr. Wendy did state.

JUDGE LEFF: He stated but you had no evidence to the contrary, did you?

MR. ROTHFELD: Mr. Wendy stated that as he remembered the automatic renewal clause, without giving any facts or even knowing the facts, that this contract continued in effect and as Mr. Portnoy brought out, Mr. Wendy did not purport to be a labor lawyer.

In any event, on the state of facts known to the union when the picketing was authorized for organizational purposes in October, I respectfully submit that that picketing was justified and should not be deemed an unfair labor practice.

I further submit that there was no proof that there was any picketing on any date after General Counsel Exhibit 3 surfaced in court, in Supreme Court on November 7th.

Mr. Gessin, without his notes, if he has any,

recalls two days in November.

He did not say when.

I would submit, first, that neither of these documents is in effect now because General Counsel Exhibit 2, since its provisions with respect to the wages contained therein are no longer purportedly adhered to, is not in effect and that General Counsel Exhibit 3 does not constitute a contract, so that no contract is in effect with the Teamsters.

My alternate position is that even if General Counsel Exhibit 3 is a contract, it only became a contract when it was signed and was not signed in 1974, in February.

JUDGE LEFF: Why should I discredit --

MR. ROTHFELD: Mr. Gessin?

JUDGE LEFF: Yes, why should I discredit him? He has testified that he signed it on that date.

MR. ROTHFELD: Because neither of his attorneys saw this contract until at least November 4, 1975.

I must presume that the attorneys presented what they knew, and my third position is that even if this contract were signed in February 1974, and is a valid contract, although it makes no reference to wages except increase of, "cents per hour", then underthe facts and circumstances known to the union when the picketing was authorized that that picketing

did not constitute an unfair labor practice and it would not effectuate the purposes of the Act to so find.

MR. PORTNOY: Your Honor, may I therefore assert a number of things that I would like to comment on Mr. Rothfeld's argument?

Mr. Rothfeld makes reference to what the union knew and what the union didn't know at the time this picketing began, the time of the Supreme Court action with respect to the attempts the employer made in order to obtain relief.

At one point in the argument by Mr. Rothfeld my notes reflect the fact that as of the time the Supreme Court action was commenced there was no reason for the union to anticipate the fact that the employer was engaged in interstate commerce.

I submit to you that Mr. Rothfeld is incorrect in his statement as factual matter.

Now, I realize that technically the evidentiary portion of this hearing is closed and you are hearing arguments from counsel.

However, in a memorandum of law submitted by Menagh,Trainor and Rothfeld in the Supreme Court action in Bronx County, on page three thereof it states, and I am reading from the memo and I will offer it for

inspection to Your Honor if Your Honor desires:

"This court should refer this case to the National Labor Relations Board. The Court of Appeals has held, Anton, 8 New York Second 273, the picketing activities protected or prohibited by the labor management relations act is within the exclusive jurisdiction of the National Labor Relations Board where interstate commerce is affected. Upon information and belief it is clear that Gessin's business now affects interstate commerce, National Labor Relations Board as amended,Section 987."

Now, I don't think I have to comment further on the affect of the inconsistency in the statements involved.

Mr. Rothfeld's comment about the employer not leveling with his client is likewise incorrect.

Mr. Detsky, according to Mr. Rothfeld, said that he had, in an affidavit,that there was a February '74 contract.

Mr. Rothfeld picked up the fact and asked Mr. Detsky to check it out.

Mr. Detsky checked it out and introduced the contract in court.

This is entirely consistent with honorable conduct on the part of the attorney when the matter was called to his attention.

It is only Mr. Rothfeld who said that you didn't do it before so therefore it must have been, the contract must have been in a drawer.

Not everybody does everything according to a manner that Mr. Rothfeld later requires them to do.

Mr. Detsky was acting honorably.

HE said he didn't know and will check it out and when he checked it out that contract was in court.

In reference to the standards required by a Judge in a criminal proceeding, a criminal proceeding to enforce the payment of non enforcement of collective bargaining agreement because it is a crime in New York not to pay wages, but as you know the standards of proof in a criminal law proceeding and the standards of proof required in a civil proceeding or a proceeding before a National Labor Relations Board are entirely different.

So a criminal law judge is not necessarily acting in a manner that is inconsistent that is required before the National Labor Relations Board.

So far as the burden of proof, Mr. Rothfeld would have us believe or have you believe that it is up to the employer to hand up everything and if he doesn't hand up everything the day before yesterday the employer is supposed to beat his breast and say,

"mea culpa, mea culpa, mea culpa."

JUDGE LEFF: His position is that since he didn't come up with the February agreement you would like me to presume that there was wasn't any agreement and that it was an afterthought that occurred.

MR. PORTNOY: I understand and perhaps what I am saying is that somewhat of a dramanization but this is in effect what Mr. Rothfeld is asking people to do.

The fact of the matter is he has no direct proof.

JUDGE LEFF: Let me ask you an unrelated question.

There was an election held according to your allegation of your complaint that is admitted on November 21, 1973, and wasn't the Teamsters a party to that election?

MR. PORTNOY: No.

JUDGE LEFF: How does it work in New York?

MR. PORTNOY: Perhaps there should have been some explanation on the record, but what happened there was that, and we have the documents in the file, Local 3 filed the petition and Local 363 never intervened.

There is no testimony on the record at this point why Local 363 never intervened.

If Your Honor desires it we can put Mr. Gessin on and have him explain why Local 363 never intervened.

In any event, the election was between Local 3 and no union.

Obviously, if Local 3 won that election they would have a certification from the New York State Labor Relations Board, and if for some reason Local 363 was unhappy about it it would then have to take steps to set aside the State Labor Relations Board certification.

The employer, of course, would have been in a position where it would be hard put to set it aside, but the employer had participated in the proceeding and was really in no position to object if Local 3 won.

The fact of the matter was that Local 3 did not win.

JUDGE LEFF: Do you have anything more?

MR. ROTHFELD: Yes, Your Honor.

I did not plan to go outside the record but counsel put in a quote from my memorandum.

There has to be a bit of explanation.

JUDGE LEFF: Why don't you put the whole memorandum in evidence now by agreement?

MR. PORTNOY: Sure.

MR. ROTHFELD: Your Honor, there is really no --

MR. PORTNOY: I am willing to agree.

MR. ROTHFELD: I don't think there is any point in cluttering the record.

JUDGE LEFF: If you are referring to one part and you are referring to another part ==

MR. ROTHFELD: I won't refer to any part of it.

I will only state that the memorandum is dated November 6, 1975, and was dictated on that date.

Prior to that date I was informed by Mr. Detsky that Gessin had eight or ten employees.

From my recollection from the New York State Board election there had been three or four.

Upon Mr. Detsky having advise me that there were eight or ten he wrote the sentence quoted by Mr. Portnoy, "upon information and belief, it appears that there are now in interstate commerce."

And the eight or ten employees indicates a reasonable liklihood of interstate commerce in connection with the business connected therewith.

Now that I look at the exhibits where I notice that for two months there was only one employee who was the foreman and others, there were only two or four and I am again unclear except we have testimony that for some allegedly made payments into the union themselves or else union dues were paid for them by the employer and of course this might also explain what happened at the State Board election.

But this is really outside the record and outside the case.

It is correct that standards of proof in a criminal law case are different, but whether the standards of the Board are such that you can find first General Counsel Exhibit 2 is in effect and second, that General Counsel Exhibit 3 is in effect I doubt.

I doubt you have the record based upon which General Counsel Exhibit 2 can be found to be in effect at this time, the one which expired in 1973, and I doubt that General Counsel Exhibit 3, whenever it was signed, constituted the kind of document which would be a bar to an election and picketing during the subsistence of which cause a finding of unfair labor practice violation on 8B7.

As to information the subsistence of deductions of union dues and lack of deduction of union dues, some of that is explained by Mr. Gessin's testimony that some people's dues were deducted, some dues were contributed and so Mr. Gessin believed, although he didn't say how he knew that they paid their own dues.

In any event, my conclusion is that it would not effectuate the purposes of the act of an unfair labor practice here, and this amply discussed on the

record and need not be reiterated.

JUDGE LEFF: If there is a contract enforced in force and you picket it is an unfair labor practice.

If there is no contract there is no unfair labor practice.

MR. ROTHFELD: If Your Honor please ==

JUDGE LEFF: Isn't that all there is to it?

MR. ROTHFELD: No, it is not, Your Honor.

First, if there is a contract in effect then it would have to be a finding as to what date it took effect.

If Your Honor is going to find that it took effect February 1st, of 1974, or that General Counsel Exhibit 2 remained in effect which of these findings you are going to make of this I don't know.

But I would submit that where the union had ample reason to believe while the picketing took place that there was no contract in effect and == as I think my testimony show ==

JUDGE LEFF: That wouldn't relieve it from a finding of violation, no reason to believe there was a contract if the contract was in effect at that time under the statute and if you picket while there is a contract in effect no question concerning representation can be raised, it is an unfair labor practive.

MR. ROTHFELD: If Your Honor please,,as I read the act, any finding of an unfair labor practice requires, and I think the language of the complaint requires that the unfair labor practice is continuing and is likely to continue further and that it would effectuate the purposes of the Act.

For a finding of unfair labor practice, both of those things --

JUDGE LEFF: If an unfair labor practice is found what kind of an order to you want?

MR. PORTNOY: An order to -- an order prohibiting the picketing occurring.

JUDGE LEFF: Until when?

MR. PORTNOY: In accordance with the statutory requirement.

JUDGE LEFF: Until the question concerning representation can be raised again?

MR. PORTNOY: That is right.

JUDGE LEFF: Off the record.

(Discussion off the record.)

JUDGE LEFF: On the record.

Do you want to file a brief?

I would like to have one.

MR. PORTNOY: If Your Honor is specifically requesting me ==

JUDGE LEFF: But I'm not going to give you too much time on this case.

About 20 days.

MR. PORTNOY: All right.

JUDGE LEFF: Very well, briefs are to be filed by February 9th..

There being nothing further, the hearing is closed.

(Whereupon, the hearing was adjourned.)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner,	)	No. 76-4203
v.	)	
LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies of the Board's appendix in the above-captioned case, have this been served by first class mail upon the following counsel at the address listed below:

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/s/ Elliott Moore
Elliott Moore
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D.C.

this 15th day of November, 1976.